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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 1010

PACIFIC MARITIME ASSOCIATION,
Petitioner,

vs.

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, PACIFIC DISTRICT, comprising Marine Firemen's Union, Sailors' Union of the Pacific and Marine Cooks and Stewards, SAILORS' UNION OF THE PACIFIC, Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers Association, and Marine Cooks and Stewards Union, and UNITED STATES OF AMERICA,
Respondents.

Motion to Expedite Disposition of Cause

Brief in Support of Motion to Expedite Disposition of Cause

and

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PACIFIC MARITIME ASSOCIATION,
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SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, PACIFIC DISTRICT, comprising Marine Firemen's Union, Sailors' Union of the Pacific and Marine Cooks and Stewards, SAILORS' UNION OF THE PACIFIC, Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers Association, and Marine Cooks and Stewards Union, and UNITED STATES OF AMERICA,
Respondents.

Motion to Expedite Disposition of Cause

Comes now petitioner PACIFIC MARITIME ASSOCIATION and moves the Court to expedite the proceedings herein in the manner hereafter indicated so that the case may be decided with utmost dispatch. The specific orders that petitioner moves the Court to make are as follows:

1. That the respondents be permitted to file any opposition to this motion on or before June 5, 1962 by telegram or in typewritten form and to file any brief in opposition to the petition for writ of certiorari (which is filed simultaneously with this motion) not later than June 6, 1962.

2. That any other petitions for writ of certiorari be filed not later than June 6, 1962.

3. That in the event any petition for writ of certiorari be granted, all parties be permitted to file briefs on the merits not later than June 8, 1962.

4. That the matter be set down for argument on June 9 or 11, 1962, or as soon thereafter as the cause can be heard.

5. That the rules of the Court requiring printing of the briefs and record be dispensed with.

The reasons compelling the prompt disposition of the cause are set forth in the brief supporting this motion filed herewith.

Dated: June 1, 1962

J. Paul St. Sure
Richard Ernst
Attorneys for Petitioner
Pacific Maritime
Association

Brief in Support of Motion to Expedite Disposition of Cause

Petitioner Pacific Maritime Association has moved the Court to exercise its power to shorten the periods of time involved under some of its rules and to waive other rules for the purpose of expediting the decision in this case. This Court has on prior occasions taken similar action where the nature of the case and the public interest involved therein required extraordinary treatment by this Court. *Aaron v. Cooper*, 358 U.S. 5 (1958); *United Steelworkers v. United States*, 361 U.S. 44 (1959).

This case arose out of a strike by the unlicensed seamen against the members of petitioner who are steamship companies comprising the West Coast maritime industry. The district court issued an eighty-day injunction under § 208 of the Labor Management Relations Act, 1947 (29 U.S.C. § 178) that will be discharged on June 30, 1962. To effectuate the preliminary injunction, the district court issued a supplementary order that would regulate the unions' resumption of strike action so as to insure that all cargo carried on ships sailed by the employers under compulsion of the preliminary injunction would be carried to port of destination and discharged and delivered before or after the eighty days. The Court of Appeals for the Ninth Circuit affirmed the injunction and the supplementary order, except that it ordered that the supplementary order should be modified so that it will terminate on the same day that the preliminary injunction is to be discharged. This modification is now frustrating the injunction and rendering it inoperative to relieve the national emergency that now imperils the public health and safety. The court of appeals recognized this, as we fully set forth in our petition for a writ of certiorari, *infra*, pp. 9, 10 and 12-13.

We respectfully submit that if this Court is ever to pass upon the meaning of the national emergency provisions of the Labor Management Relations Act, 1947, it must do so pursuant to an expedited handling of the case, generally in accordance with a time schedule such as we have proposed. This was necessary and was done in *United Steelworkers v. United States*, 361 U.S. 39 (1959), where this Court entered its per curiam opinion ten days after the decision of the court of appeals in *United States v. United Steelworkers of America*, 271 F.2d 676 (3 Cir. 1959). If this Court does not proceed on such an expedited basis, all the issues will become moot and the national emergency will not be alleviated. The only obstacle to the resolution of the issues presented in this case is time. This Court can remove that obstacle. We ask that it do so.

Dated: June 1, 1962.

Respectfully submitted,

J. Paul St. Sure
Richard Ernst
Attorneys for Petitioner
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Association

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Petitioner, Pacific Maritime Association, prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Ninth Circuit entered on May 29, 1962.

CITATION OF OPINIONS BELOW

The memorandum opinion of the district court is unreported and is printed herein in Appendix B, pages 16-28. The opinion of the court of appeals is unreported and is printed herein in Appendix B, pages 33-49.

JURISDICTION

The judgment of the court of appeals (App. B, page 49) was filed on May 29, 1962. To the best of our knowledge no petition for rehearing has been filed by any party. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and 29 U.S.C. § 178(c).

QUESTION PRESENTED

Whether a district court having entered an eighty-day injunction under § 208 of the Labor Management Relations Act, 1947, against a strike that imperils the national health or safety has jurisdiction to enter a supplementary order that provides for judicial restraint against certain disruptive actions in resuming the strike at the end of the eighty days where the court has found that the occurrence of such subsequent disruptive actions and the threat thereof during the eighty days will vitiate the injunction's effect during its term and has thereupon concluded that this supplementary order is necessary to make the injunction effective to stop the national emergency and to accomplish the other purposes of the statute for the eighty day period.

STATUTES INVOLVED

The statutory provisions involved are the national emergency provisions of the Labor Management Relations Act, 1947 (hereinafter referred to as "the Act") §§ 206-210, 61 Stat. 136, 155-156, 29 U.S.C. §§ 176-180. They are printed herein in Appendix A, at pages 1-4 (as set forth in the Act) and at pages 5-8 (as set forth in the United States Code).

STATEMENT

This suit was brought by the United States as plaintiff, pursuant to the national emergency provisions in Title II of the Act, §§ 206-210 (29 U.S.C., ch. 7, subch. III, §§ 176-180). The defendants in the trial court were petitioner Pacific Maritime Association and respondent unions. Petitioner is the collective bargaining representative of the employers constituting the West Coast part of the American flag maritime industry. Respondent unions act *inter alia* to represent for collective bargaining purposes the unlicensed seamen employed on vessels operated by the employers represented by petitioner.

On March 16, 1962 respondent unions began a strike against petitioner and the employers it represents. This strike was continuing on April 11, 1962, when a complaint seeking a temporary restraining order and preliminary injunction was filed in the United States District Court for the Northern District of California, Southern Division (R. 4).[1] The district court was asked to exercise its jurisdiction under the national emergency provisions of the Act on the basis of affidavits asserting the existence of a national emergency.

1. We use the reference "R" to indicate the original record of the courts below and use the references "App. A" and "App. B" to indicate the appendices to this petition.

On April 11, 1962 after hearings in open court, the district court entered its temporary restraining order directing the employers to resume sailing their tied-up ships, free of lockout, and directing the seamen to perform their work on them, free of strike. Almost immediately problems arose. The seamen, at the suggestion of the unions, concertedly refused to sign shipping articles in the usual form because they would thereby be under a contractual duty to work after June 30, 1962, the eightieth day following April 11, 1962.[2] This action prevented the sailing of ships.

A hearing with respect to this impasse was held on April 13, 1962. During this hearing, and over objections of petitioner and respondent unions, a preliminary injunction was entered by the district court (R. 73; App. B 13). The preliminary injunction was based on findings of fact and conclusions of law (R. 68; App. B 8) to the effect that there was a national emergency in that the strike involved a substantial part of the maritime industry and its continuance imperiled the national health or safety. When the court entered the preliminary injunction, it reserved to the parties their rights to present fully their objections to the preliminary injunction at a hearing on April 16, 1962, the date specified in the order to show cause for hearing on motion for the preliminary injunction, and reserved fully its power to modify and supplement the injunction on the basis of the record therein.

2. The temporary restraining order having been entered at 6:15 p.m. on April 11, 1962, it has been assumed by the parties and the court of appeals that the statutory eighty-day period would expire at 6:15 p.m. on June 30, 1962 and that the injunction entered by the district court would be discharged at that time. Accordingly we have used simply "June 30" to designate the moment of discharge of "the injunction" as provided in § 210 of the Act, 29 U.S.C. § 180.

At the hearing on April 16, petitioner presented a motion for a supplementary order, asking the court to exercise its jurisdiction set forth in § 208(a)(ii) of the Act "to make such other orders as may be appropriate" in accordance with the general principles of equity jurisdiction, and the parties submitted evidence and argument thereon. On April 18, 1962 the district court set forth its findings and conclusions with respect to the motion of petitioner, which are set forth in the memorandum opinion (R. 119; App. B 16). The district court exercised its jurisdiction specifically granted in § 208(a)(ii) "to make such other orders as may be appropriate" (R. 130, 132; App. B 26, 28) to provide for "an orderly beginning and an orderly conclusion of all voyages conducted during the 80-day cooling off period" (R. 126; App. B 23). Among its underlying findings, the district court included the following (R. 128; App. B 25):

> "Without the necessary assurances of returning to the port of ultimate destination and the discharge of the cargo after the 80 days, the injunction would provide merely a selective or partial resumption of work."

With respect to the rejected contention that the injunction should be interpreted to permit the unions after June 30 to prevent the discharge of cargoes loaded during the period of the injunction, the court found (R. 129; App. B 25):

> "Instead of creating a return to status quo, the injunction, if so interpreted as to its scope and legal effect, would create a catastrophic situation unsound economically, eminently unfair and unjust, and in complete conflict with the mandate of maritime law and the traditions of the sea."

The memorandum opinion includes further findings to the effect that the threat of a disruptive resumption of strike action to prevent discharge and delivery of cargo loaded

during the eighty-day injunction period, would frustrate the injunction and prevent its accomplishing the statutory purposes (R. 128-129; App. B 25). The district court concluded that it would fashion a supplementary order that "* * * will provide for the duration of the hiring and the express obligations imposed under the articles when executed, regarding the ultimate care and disposition of cargoes upon the termination and completion of the voyages engaged in during the 80-day period, with reciprocal provision being made for pay-off by mutual consent" (R. 132; App. B 28).

The court accordingly drafted and entered such a supplementary order. It regulated the reinstitution of strike activity following discharge of the injunction to provide an orderly procedure for the conclusion of voyages commenced pursuant to the mandate of the injunction. Thus, while permitting the reinstitution of the strike after June 30, it provided that strike action as to individual ships would be deferred until cargoes loaded during the eighty days were carried to destination, unloaded and delivered off the dock. It had the effect of making the injunction operative to stop the national emergency for the statutory period of eighty days and to accomplish the statutory purposes of providing vital production during the injunction period and of providing stable conditions for the conduct of collective bargaining between the parties and with the participation of government agencies, including the handling of an election by the National Labor Relations Board between June 10 and June 25, 1962 with respect to the employers' last offer.

The court of appeals determined that the statutory provision requiring discharge of "the injunction" against the strike as a whole, in § 210 of the Act, 29 U.S.C., § 180,

was applicable to the grant of additional jurisdiction to the district court "to make such other orders as may be appropriate" in § 208 of the Act, 29 U.S.C. § 178. On this basis it required the district court to terminate the supplementary order at the time that the preliminary injunction is discharged although it affirmed the determination of the district court that the provisions involved "are entirely appropriate insofar as union activity during the eighty-day period is concerned" (R. 165; App. B 48). It required their termination while recognizing that this would frustrate the basic purposes of the statute to provide full production and normal operations during the entire eighty-day period, stating:

> "As between the desired achievement of full production during the eighty days, and the termination of all vestiges of judicial restraint on the eightieth day, the former must give way to the latter." (R. 165; App. B 47)

Thus the court of appeals held that the specific statutory limit on the duration of "the injunction" applies by implication to the court's additional jurisdiction to make such other orders as are appropriate and, further, that this implied limitation takes precedence over primary policies of the national emergency provisions. It so held despite the use of the definitive article "the" and the absence of any statutory provision limiting the period that any such "other order" may be in effect, and even though the result of its holding is to vitiate the injunction and prevent the accomplishment of its statutory purposes.

Also on April 16, 1962, respondent unions argued motions for a supplementary order having the following effects: (1) To prohibit the petitioner and its members, during the period of the preliminary injunction, from requiring seamen to sign articles that would be binding upon them during

discharge of cargo at any American port after June 30; (2) To require the petitioner and its members to discharge their crews and to pay them off by mutual consent immediately upon entry in any American port after June 30, 1962 upon the making of their vessel safe and secure; (3) To prohibit the petitioner and its members from sailing any vessel employing seamen represented by respondent unions from any American port upon a voyage more than one-half of which would occur after June 30, 1962. These motions, having a purpose directly opposite to the motion of petitioner, were denied by the district court upon findings that the position of the unions "would render nugatory the traditional obligations of the seamen provided for in the articles and would tend to create a selective or only a partial resumption of work" (R. 127; App. B 23). With respect to the unions' motions, the court further held (R. 131; App. B 27):

> "Their contention that upon the expiration of the eightieth day * * * the seamen are privileged to walk off the ship at the first American port leaving the cargo and ship to be strikebound for an indefinite period of time, is contrary to the traditions, customs, and practices long held in reverence under elementary principles of maritime law."

The action of the district court in denying these motions was affirmed by the court of appeals.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

The national emergency provisions, including the grant of jurisdiction to make "other orders" in effectuation of their policies, are designed to protect the national health and safety and generally to secure the public interest. A writ of certiorari to review the question presented herein should be granted for the reasons set forth hereafter.

1. The court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

The question here involved is one of great importance, arising under a statute enacted to protect the nation against national emergencies caused by labor disputes in industries of prime importance. Any question as to the scope of the jurisdiction of district courts to make such "other orders" as may be appropriate and necessary to effectuate the policies of the national emergency provisions affects the national health and safety. The question presented in this petition is of particularly vital importance because the answer of the court of appeals means the nation emergency provisions cannot be meaningfully applied to the maritime industry.

The court of appeals decided the question here presented by its simple and outright choice between two statutory policies that it found to exist and to be conflicting. It recognized that it was a primary purpose of the national emergency provisions of the Act that there be a full, rather than a partial or limited, enjoining of the strike causing a national emergency, which would provide for at least eighty days of vital production and of normal operations in which the statutory steps may be taken to prevent a recurrence of the strike by resolution of the issues in dispute between the employers and the unions. It held that the statute is defective to accomplish the statutory plan in the maritime industry because it decided to give overriding weight to a policy it implies from a provision that "the injunction" shall be discharged at the end of eighty days. It holds that this provision must be extended by implication to "other orders", which are subject to no such express statutory limitation, so as to create a policy that requires "the termination of all vestiges of judicial re-

straint on the eightieth day". It goes on to conclude that this policy is so overriding that it must govern even though the result be the frustration of such primary policy. (R. 166; App. B 47).

If this type of outright choice between statutory policies, implied or express, must be made by a court, we submit it should be made by this Court. Particularly should this Court make such a decision if the result, as here, is to frustrate the statutory purpose of preventing a national emergency as defined in this Court's only decision on these provisions and to render inoperative a fundamental statutory plan for relieving such emergencies.

The need for action by this Court is further shown by the fact that the choice between these policies made by the court of appeals was clearly erroneous both as a matter of sound policy and upon consideration of governing principles of law, some of which are discussed in the next section of the petition. We submit that there is no such policy as to all judicial restraint as that set forth by the court of appeals. If the court's interpretation were permitted to prevail, unions and employers could take, or threaten to take, any actions whatsoever after the eightieth day to frustrate the effectiveness of the injunction, and yet the district court would have no power over them in the national emergency injunction proceeding. In the maritime industry such frustration is easy because "production" is movement of *other persons'* cargo to destination and delivery of it. A steamship company cannot store in a warehouse voyages that were never made because cargoes were diverted in order that their delivery could be effected. But in other industries of prime national importance it is also easy to visualize post strike action that, if it is likely to occur, will make it economically infeasible to operate at any approximation of a normal level during the eighty day

period. It is not to be presumed or implied that the Congress has been so inept in drafting legislation to meet a national emergency as to preclude the courts of equity from protecting the effectiveness of their injunctions. If the statutes require this conclusion to be reached, the final determination to this effect should be made only by this Court.

2. The court of appeals has decided a federal question in a way in conflict with applicable decisions of this Court.

The court of appeals has acted in contravention of applicable decisions of this Court. These establish that grants of equity jurisdiction should not be circumscribed or cut off except by express statutory language. *Porter v. Warner Holding Co.*, 328 U.S. 395 (1946). Speaking of jurisdiction to issue "other orders" under the Emergency Price Control Act of 1942, this Court stated (p. 398): "Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. 'The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction.'" The Court, in *Mitchell v. DeMario Jewelry*, 361 U.S. 288, built on this foundation to hold in effect (p. 290) that doubts as to the existence of equity jurisdiction should be resolved in favor of upholding jurisdiction. This Court similarly has established that equity jurisdiction should be construed broadly in vindication of the public interest and to effectuate the policies of legislation designed to protect the public. *Mitchell v. DeMario Jewelry*, 361 U.S. 288, 290-292 (1959); *Hecht Company v. Bowles*, 321 U.S. 321,

329-330 (1944); *Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515, 552-553 (1937); *United States v. Morgan*, 307 U.S. 183, 194 (1939). A similar doctrine seems to have underlain the concurring opinion of Justices Frankfurter and Harlan in *United Steelworkers v. United States*, 361 U.S. 39 (1959) wherein they declared that § 208 "is not to be construed narrowly" (361 U.S. at 52), and that the national emergency provisions "must be construed to give full effect to the protections they seek to afford" (361 U.S. at 54). In that case this Court held that a partial injunction would not issue, and one opinion stated that the district court had no discretion to withhold an injunction "to stop the national emergency for at least eighty days" (361 U.S. at 56-57; cf. the per curiam opinion at 41).

The court of appeals decision that is the subject of this petition is in conflict with these applicable decisions of this Court. That court has ordered the district court to withdraw the relief that will stop the national emergency for the eighty days and has ordered the district court to permit its injunction to have partial and limited effect and otherwise to fail to effectuate basic policies of the Act. It bases this order on a narrow and restricted construction of statutory language.[3] In reaching its judgment requiring modification of the supplementary order, the court of appeals decided that basic equity principles were to be rejected and that the national emergency provisions should be construed to permit a gradual redevelopment of the national emergency up to June 30 so as to assure that on that day there would be a full resumption of the national

3. Patently, the language of § 210 is not a clear and valid command to discharge "other orders" on June 30. Rather it evidences an intent that only "the injunction" need be discharged on that date by its use of the definite article "the" and by its failure to include any reference to "other orders" of any type.

emergency *status quo* (cf. R. 163; App. B 43). It held such a construction needed to be preferred to one that would prevent the national emergency for a full eighty days during which vital production can be carried on and the eighty-day statutory procedure for permanent solution of the emergency followed through. If great principles and primary statutory purposes must so yield, this Court should make this decision, if only so that Congress can determine what, if any, legislative correction is necessary. If these need not yield, this Court should here exercise its jurisdiction to establish that in this and other labor-management national emergencies the applicable provisions of the Act shall be given their fullest lawful effect.

CONCLUSION

It is respectfully submitted that this Court should grant the writ of certiorari prayed for by petitioner.

Dated: June 1, 1962.

Respectfully submitted

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(Appendices Follow)

APPENDIX A

LABOR MANAGEMENT RELATIONS ACT, 1947

[Public Law 101 - 80th Congress].

AN ACT

To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND DECLARATION OF POLICY

SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947."

* * * * * * *

TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

* * * * * * *

NATIONAL EMERGENCIES

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the

facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public. [29 U.S.C. § 176]

SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended, are hereby made applicable to the powers and duties of such board. [29 U.S.C. § 177]

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended. [29 U.S.C. § 178]

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which has been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall

take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter. [29 U.S.C. §179]

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action. [29 U.S.C. §180]

* * * * * * *

[Public Law 101, 80th Cong., 61 Stat. 136, 155-156]

UNITED STATES CODE

Title 28

28 U.S.C. § 1254.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy. June 25, 1948, c. 646, 62 Stat. 928.

28 U.S.C. § 1651.

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction. June 25, 1948, c. 646, 62 Stat. 944, amended May 24, 1949, c. 139, § 90, 63 Stat. 102.

Title 29

29 U.S.C. § 176.

Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

29 U.S.C. § 177.

(a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents) are made applicable to the powers and duties of such board.

29 U.S.C. § 178.

(a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate.

(b). In any case, the provisions of sections 101-115 of this title, shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 346 and 347 of Title 28.

29 U.S.C. § 179.

(a) Whenever a district court has issued an order under section 178 of this title enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this chapter. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

29 U.S.C. § 180.

Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

APPENDIX B

In the United States District Court for the Northern District of California, Southern Division in Admiralty

No. 40642

United States of America,

Plaintiff,

v.

Seafarers International Union of North America, Pacific District, comprising Marine Firemen's Union, Sailors' Union of the Pacific and Marine Cooks and Stewards,

Sailors' Union of the Pacific, Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association,

Marine Cooks and Stewards' Union, Pacific Maritime Association,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having been heard by the Court on the motion of plaintiff, United States of America, for a preliminary injunction, the Court made the following findings of fact and conclusions of law.

FINDINGS OF FACT

(1) As a result of a labor dispute existing between the defendant unions, Seafarers International Union of North America, Pacific District, comprising Marine Firemen's Union, Sailors' Union of the Pacific and Marine Cooks and Stewards, Sailors' Union of the Pacific, Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers Association, Marine Cooks and Stewards' Union, Pacific Maritime Association, which represent among others, employees in [68] the maritime industry, an industry engaged in trade, commerce and transportation among the several states and with foreign nations, and the other defendants (referred to in the complaint as "employers"), which served as the bargaining agencies with respect to rates of pay, wages, hours, terms, and conditions of employment, of employers which are steamship companies or operators of or agents for ships in the maritime industry, a strike commenced on March 16, 1962 and continued until this Court issued at 6:40 PST on April 11, 1962, a temporary restraining order enjoining the continuance of such strike.

(2) On April 7, 1962, the President of the United States, acting under the provisions of Section 206 of the Labor Relations Act, 1947 (29 U.S.C. 176) issued Executive Order 10946 (29 F.R. 5723) wherein he found that such dispute resulted in a strike affecting a substantial part of the maritime industry, an industry engaged in trade, commerce, and transportation among the several states and with for-

eign nations, and that such strike, if permitted to continue, would imperil the national health and safety, and appointed a board of inquiry to inquire into the issues involved in such labor dispute.

(3) The board of inquiry inquired into the issues involved in the dispute and rendered its written report dated April 11, 1962, to the President on April 11, 1962.

(4) After receipt of the report, the President, on April 11, 1962, directed the Attorney General, pursuant to the provisions of Section 208 of the Act (29 U.S.C. 178), to petition in the name of the United States any district court of the United States having jurisdiction of the parties to enjoin the continuance of such strike and for such other relief as may be necessary or appropriate.

(5) Thereupon on April 11, 1962, the Attorney General brought this action on behalf of the United States of America in this Court against the defendants. [69]

(6) Upon the filing of the verified complaint and accompanying affidavits and exhibits and after due consideration thereof, this Court at 6:10 p.m. o'clock on April 11, 1962, issued a temporary restraining order, accompanied by a statement pursuant to Rule 65, F.R.C.P., as to the nature of the injury, why it was irreparable, and why it was granted without notice (although counsel for certain of the defendant unions did appear and some of them opposed with affidavits the plaintiffs' application for a temporary restraining order). The restraining order provided that it would expire at 11 a.m. o'clock on April 20, 1962, unless it should be extended for good cause shown or with the consent of defendants.

(7) Copies of the verified complaint, of the affidavits and exhibits annexed thereto, of the temporary restraining order, with the attached statement issued by the Court, and

of plaintiff's motion for a preliminary injunction has been served upon defendants.

(8) Unless the Court grants a preliminary injunction, the defendant unions will, upon the expiration of the temporary restraining order, resume the strike in the maritime industry.

(9) The strike by the defendant unions consisted of a concerted stoppage of work on part of said defendants, not in the exercise of the right of individual employees to quit their labor, as set forth in Section 502 of the Act (29 U.S.C. 143), and resulted from an unresolved labor dispute by the defendant unions and the defendant bargaining agencies for steamship companies or operators of or agents for ships in the maritime industry. The strike has affected a substantial part of the maritime industry.

(10) The strike, if permitted to resume or to continue, will imperil the national health and safety in the following respects:

(A) It would have a critical impact upon Hawaii, which occupies a key position in our defense structure, because [70] Hawaii's supply of essential foods (taking into account the time required for transportation from the West Coast to Hawaii) would be exhausted.

(B) Since the American Merchant Marine is intended, pursuant to the Merchant Marine Act, 1936 (46 U.S.C. 1101 et seq.), to be available as a naval and military auxiliary in time of war or national emergencies, the strike, by rendering a substantial part of the merchant marine inoperative, would constitute a serious risk to the national health and safety;

(C) It would seriously disrupt the operation of the program under the Mutual Security Act of 1954, as amended, to provide military, economic, and technical assistance to friendly foreign nations, which is an im-

portant program administered by the Agency for International Development to promote the foreign policy of the United States and to maintain its national defense and security;

(D) It would have a serious adverse effect upon the Government's Food for Peace Programs under the Agricultural Trade Development and Assistance Act of 1954, as amended, (7 U.S.C. 1691), which programs are designed to promote the economical stability and to make the maximum efficient use of surplus agricultural commodities in furtherance of the foreign policy of the United States by furnishing emergency assistance to friendly nations to meet famine and other urgent relief requirements.

(E) It would have an adverse impact upon the nation's economy and thereby seriously impair the nation's overall defense position, since the defense effort of the United States is dependent upon the strength of the economy of the United States. [71]

CONCLUSIONS OF LAW

(1) The Court has jurisdiction of the subject matter of this suit and of the parties.

(2) All statutory requirements of Sections 206-208 of the Act (29 U.S.C. 176-178) as to Executive action to be taken prior to the commencement of this suit has been fully complied with.

(3) The work stoppage was a strike on the part of the defendant unions and did not constitute the exercise of the right of individual employees to quit their labor, as set forth in Section 502 of the Act (29 U.S.C. 143).

(4) The strike affected a substantial part of the maritime industry, which is an industry engaged in trade, com-

merce, and transportation among the several states and with foreign nations.

(5) The strike, if permitted to continue or to be resumed, would imperil the national health and safety and thereby cause irreparable injury to the United States of America, for which there is no adequate remedy at law.

(6) Plaintiff, the United States of America, is entitled to the preliminary injunction issued by the Court.

Dated: April 13, 1962.

s/ GEORGE B. HARRIS
United States District Judge

[Endorsed]: Filed Apr. 13, 1962, Clerk, U. S. Dist. Court, San Francisco. [72]

[Title of Court and Cause]

PRELIMINARY INJUNCTION

This cause, having been heard by the Court on April 13, 1962 on plaintiff's motion for a preliminary injunction pursuant to Section 208 of the Labor Management Relations Act, 1947 (29 U.S.C. 178), and the Court having considered the pleadings, the evidence, and memoranda of law and argument of counsel:

NOW, THEREFORE, it is hereby ordered:

1. That each defendant and each member company of each defendant and their officers, directors, boards, agents, servants, employees, members, and attorneys, and all persons [73] in active concert or participation with them, or any of them are hereby restrained (a) from in any manner continuing, encouraging, ordering, aiding, engaging or taking part in a strike or lock out in the maritime industry of the United States or (b) from in any manner interfering

with or affecting the orderly resumption and continuance of work in said industry at the same rates of pay, hours of labor, and other terms and conditions of employment as were in effect immediately prior to March 16, 1962, subject to such modifications thereof as the defendants may agree upon, and from taking any action which would interfere with this Court's jurisdiction in the premises.

2. That the members of defendants Seafarers International Union of North America, Pacific District, comprising Marine Firemen's Union, Sailors' Union of the Pacific and Marine Cooks and Stewards, Sailors' Union of the Pacific, Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, and Marine Cooks and Stewards' Union, acting in concert, are hereby restrained from in any manner continuing, encouraging, ordering, aiding, engaging or taking any part in a strike or lock-out in the maritime industry, or from in any manner interfering with or affecting the orderly resumption and continuance of work in that industry, and from taking any action which would interfere with this Court's jurisdiction in the premises or which would impede or interfere with due observance of and compliance with this order, provided, however, that nothing in this paragraph shall be construed to require an individual employee to render labor or service without his consent nor to make the quitting of his labor or service by an individual employee an illegal act.

3. That the defendants Seafarers International Union of North America, Pacific District, comprising Marine [74] Firemen's Union, Sailors' Union of the Pacific and Marine Cooks and Stewards, Sailors' Union of the Pacific, Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, and Marine Cooks and Stewards' Union, and their respective appropriate officers, agents, servants, and

employees are hereby directed (a) to instruct immediately all their respective members to resume their normal employment as the ships may be made ready for sailing, and (b) to take all action which may be necessary to insure that such instructions are carried out, and (c) to give notice forthwith to their respective members of the terms of this order by posting a copy of said order at their respective national headquarters. Such posting will be deemed to constitute notice of said order to all members of the respective defendants.

4. All defendants are hereby directed to engage in free collective bargaining in good faith for the purpose of resolving their dispute and to make every effort to adjust and settle their differences.

5. This injunction shall remain in full force and effect until the further order of this Court. The Court retains jurisdiction for the purpose of granting such other and further relief as may be necessary, and of making such further and additional orders as may be required; and for all purposes authorized and empowered by the laws and statutes of the United States of America under which this suit has been filed.

Issued April 13, 1962
6 p.m. o'clock (PST)

s/ George Harris
United States District Judge

[Endorsed]: Filed Apr. 13, 1962. Clerk, U. S. Dist. Court, San Francisco 17.

[Title of Court and Cause]

MEMORANDUM OPINION AND ORDER DENYING MOTION TO MODIFY INJUNCTION, ETC.

Under the provisions of the Labor Management Relations Act (29 U.S.C.A. 178) the Court regularly made [119] and entered a restraining order in the above entitled cause on the 11th of April, 1962. Pending an application for the preliminary injunction the restraining order was designed to preserve the status quo and prevent the defendants from conducting and continuing a strike which had resulted in a national emergency in the maritime industry.

The restraining order, although containing the usual provisions to be found in a Taft-Hartley injunction, met with immediate resistance on defendants' part and on April 13th the Court was advised that the seamen had refused to sign the articles in the traditional, statutory form unless a rider were affirmed thereto in the following form:

> (b) The following provision shall be deemed a part of this agreement and shall be added as a rider to all Shipping Articles:
>
> "It is agreed between the Master and the unlicensed crew that in the event the vessel is in a U.S. port and a bona fide strike or work stoppage occurs and the vessel is involved in such strike or work stoppage, either party to the collective bargaining agreement may terminate these Articles at such port by written notice to the other, in which event the unlicensed members of the crew shall be paid off by mutual consent. If the strike is called by a union which is not the collective bargaining representative of unlicensed crew members, the unlicensed crew members shall be paid transportation from such port to the port of engagement.

On April 13th during the course of the hearings concerned with the propriety and legal significance of the above mentioned rider, the Court regularly made and entered its findings of fact and conclusions of law and regularly made and entered a preliminary injunction herein. The far-reaching effects of the rider are at once apparent and the [120] propriety of its use by the defendants must be considered in view of the scope, design and purposes of the injunctive relief.

The Pacific Maritime Association claims that its use will tend to frustrate and render meaningless the avowed purposes and design of the Act and they request a supplemental order clarifying this issue.

Similarly, the defendant unions also ask for supplemental orders and radical modifications of the preliminary injunction, as follows:

> That defendant Pacific Maritime Association, and its member shipping companies affected by this preliminary injunction, and their agents, do not require crew members, during the period of this preliminary injunction, to sign Shipping articles which are binding upon them during the discharge of cargo in any American port at any time after eighty days following the issuance of the Temporary Restraining Order herein on April 11, 1962;
>
> That defendant Pacific Maritime Association, and its member shipping companies affected by this preliminary injunction, and their agents, pay off their crews on mutual consent and discharge them under their Shipping Articles immediately upon entry in any American port after eighty days following issuance of the Temporary Restraining Order herein on April 11, 1962, and upon the making of their vessel safe and secure;
>
> That defendant Pacific Maritime Association, and its member shipping companies affected by this preli[m]-

> inary injunction, and their agents, do not sail any vessel employing crew members represented by the defendant union from any American port upon a voyage in which more than one half such voyage, as determined from the date of departure from such American port to the scheduled date of arrival at any American port, is scheduled to occur after eighty days following the issuance of the Temporary Restraining Order herein on April 11, 1962. [121]

These proposals, drastic as they are, should be considered and viewed in the light of the problems, economic, operational and otherwise, which confront the maritime industry when strike sanctions are exacted. Not only are the ships struck, but the cargo as well, awaiting to be transported and taken from the docks and delivered to the ultimate consignee. Pacific Maritime Association asserts that this is the first instance wherein cargo, as such, was subjected to strike sanctions, and represents a new approach to the strangulation process and slow economic death which inexitably occurs when picket lines are drawn over extended periods of time.

It is unnecessary to dilate upon the tragic situation confronting the State of Hawaii. The affidavit of Governor James Quinn received in evidence during the course of the hearings on the preliminary injunction in part, stated:

> That the State of Hawaii has been plagued with strikes and threats of strikes in the maritime industry causing immeasurable damage to its economy and imperiling the health and safety of its people time and time again. During the last ten months this State has suffered two shipping strikes. Before it could recover from the first it was plunged into the second. Losses in State revenues alone for this fiscal year due to the last strike amount to approximately $2,000,000.

> That if this strike is allowed to continue the shortages and exhaustion of food supplies and other essential commodities not only imperils the health and safety of the people of this State and its economy but also seriously affects the readiness of this State, which occupies a key position in the [122] defense structure of the United States (20 per cent of its population being military or military connected) to deal with the possibility of disaster, and emergencies resulting from enemy attack, sabotage or other hostile action to the detriment of the national health and safety. The health and safety of the State of Hawaii is vital to and part of the health and safety of the United States. When the health and safety of the State of Hawaii is imperiled so is the health and safety of the Nation.[1]

Similarly, the President of the United States of America, John F. Kennedy, in his communication to the Attorney General, stated:

> In my opinion this unresolved labor dispute has resulted in a strike affecting a substantial part of the maritime industry, an industry engaged in trade, commerce, and transportation among the several States and with foreign nations, which strike, if permitted to continue, will imperil the national health and safety.[2]

Approximately 40,000 tons of vital cargo, including medical, remained undelivered and strikebound until this Court intervened. It was not until several weeks of lengthy hearings and extended negotiations that strikebound emergency cargo, including military, reefer and perishables was re-

1. In 1948 a comparable situation prevailed as to the then Territory of Hawaii. See U.S. v. I.L.W.U., 78 F. Supp. 710.

2. U.S.A. Exhibit No. C

lieved in the so-called Liberty Gold Fruit Co. v. Weisberger, et al (No. 28459) action, instituted by consignees.[3] [123]

It is significant to note that all other cargo was held under strike sanctions. Comparable acute and demoralizing situations prevailed in other West Coast ports.

During the course of the said hearings affidavits were received from responsible shippers. That of Lester Goodman, President of the World Trade Association of San Francisco and Chairman of Getz Brothers & Co., representing one of the largest shippers in the United States, stated in his affidavit:

> Getz Brothers & Co., Inc., and in my opinion the other shippers, affected by the present labor dispute, will use American Flag vessels to carry outbound and inbound cargo for possibly the first 60 days of the injunction, but after that cargo will be diverted, by necessity, to foreign flag and East Coast vessels in order to insure delivery and receipt and avoid the risk of having cargo tied up on the docks. The shippers, particularly the small ones, cannot afford to have cargo standing on the docks, such as they have experienced during the last few weeks.
>
> Unless the dispute is settled or some procedure can be worked out to insure delivery, and receipt, the shipper will have no choice but to avoid the use of the American flag vessels. This will result not only in a diversion of trade to the foreign flag vessels, but also a

3. The parties stipulated that the employees would remove from vessels perishables, freezer, cold storage, military cargo, mail and passenger baggage. In order to effectuate this stipulation the Unions removed the picket line, thus enabling their members and the longshore crews to load or unload vessels of the supplies authorized by the stipulation.

There is no reason that a similar arrangement cannot be entered into by the Unions in connection with the unloading of all cargo upon the completion of a voyage commenced during the preliminary injunction period and consummated after the 80 days have elapsed, thus permitting seamen to fulfill their duties under their articles without going through a picket line.

diversion of trade to foreign businesses. As an example, Getz Brothers is an agent for The Borden Company, and also Quaker Oats, both of which have plants abroad which can and will be used to supply the foreign market if American shipping is unreliable. Some of this business will come back to the United States, but not all of it.

There will also be further injury to the Port of San Francisco and other West Coast Ports. Business will continue to be directed to the other ports on the East Coast and the Gulf where historically strikes occur less often and are of shorter duration. [124]

The foregoing affidavit is typical of many that were marked in evidence disclosing a trend toward the use of foreign flag vessels in order to avoid the risk of having cargo tied up for extended periods at the docks and in the holds of vessels.

Also to be considered is the unusual character and far-flung activities of the industry. If the preliminary injunction is to preserve the status quo, then recognition must be given to sailing schedules, and the advance booking of cargo and passengers during the eighty day period. A series of affidavits was received by the Court from the members of the Pacific Maritime Association disclosing the internal and operational problems occasioned as a result of the strike.

Mr. Paul St. Sure, President of the Pacific Maritime Association, graphically described the situation confronting the industry:

THE COURT: What is the total consist of the fleet? How many vessels?

MR. ST. SURE: We have counted some 100 vessels. There are about 20 we haven't been able to account for, but I believe 130 vessels as an estimate will still hold that fifty per cent will be either tied up or unable

to take off by the time we reach the last week of the 80-day period, by reason of the scheduling problems and the inability to complete their voyages within the Taft Hartley period of time. This, I submit to Your Honor, presents an unusual type of problem during which, or with which, you apply the intent of the statute with regard to resumption of status quo and at the same time permitting bargaining to continue in an atmosphere of status quo operation. [251]

If the ships are not to sail, this is one thing; if the men are not to strike, this is something else again; if the ships are to sail in part only and the men are to be on strike in part only, they have certainly a different kind of anomaly. But I submit to you that in the very area of the possibility of resuming bargaining under a status quo situation the picture of this industry will indicate that as of now we are beginning to be on strike again, even though the Taft Hartley Act has a full period of 80 days during which normal operations are presumed to be in effect.

In other words, in the event that the ships are to be frustrated and their cargoes frustrated at the immediate end of an 80 day period, we will be fifty per cent on strike when about half of that period, or less, is past. I can assure you that this will not be conducive to endeavoring to bargain out a problem or settle during a period of status quo that doesn't exist. I can't stress too much the peculiar character of this problem because I think it does relate to the statutory authority which exists in Section 208 A of the Taft Hartley Act, which indicates that the Court has the power to make such supplemental orders or such other orders as may be required under the circumstances, and although we have researched the law, I think rather diligently with regard to specific law on the subject, what we find seems to indicate this becomes the responsibility of the Court before whom the problem is presented. It is necessary to shape the law to meet situations which the statute

'merely generally indicates a desire to alleviate or correct.'

The Court, in the exercise of its equity jurisdiction, may formulate orders and decrees consistent with an orderly beginning and an orderly conclusion of all voyages conducted during the 50-day cooling off period.

The specific provisions of the preliminary injunction provide in part:

> That the defendants are restrained '* * * from in any manner interfering with or affecting [29] the orderly resumption and continuance of work in said industry at the same rates of pay, hours of labor, and other terms and conditions of employment as were in effect immediately prior to March 16, 1962 * * *
>
> '* * * to instruct immediately all their respective members to resume their normal employment, as the ships may be made ready for sailing * * *'

The foregoing language is sufficient and all embracing. It contemplates that a seaman satisfy and discharge his contractual obligations under the articles without regard for the fact that the 50-day period might well expire before the completion of a given voyage.

The strategy and effect of the rider conceived and insisted upon by defendants would render nugatory the traditional obligations of the seamen provided for in the articles and would tend to create a selective or only a partial resumption of work.

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4 Tr. p. 161 [corrected text is 162 [29]].

5 Cf. Norris on the Law of Seamen, 1951 Sec. 176, p. 187. 'Because of the mutual nature of the seaman's calling his obligation under the articles is to remain with the ship until the voyage is ended unless the contract is abrogated by mutual consent or by operation of law. This duty that the law imposes upon seamen is for the purpose of safeguarding maritime property so that the mariners do not needlessly leave a valuable ship and cargo thus

A national emergency having been found by the Court to exist, the Government is entitled to an injunction against the whole strike and the Court should not order a selective or partial resumption of work. Steelworkers v. United States, 361 U.S. 39.

In United States v. National Marine Engineers' Beneficial Association, 294 F.2d 385 at 387, the Court views the significant language concerning the shipping industry:

> We could rest here, and on the convincing evidence supporting the finding that continuation of the strike "would have a critical impact upon Hawaii, which occupies a key position in our defense structure, because Hawaii's supply of essential foods (taking into account the time required for transportation from the West [127] Coast to Hawaii) would be exhausted * * * but for appellants' contention that, assuming so much to have been established, the injunction should have been limited to strikebound tankers serving the East Coast and ships in the Hawaii trade. True, this contention reminds of that with respect to "a selective reopening of some of the steel mills * * * to fulfill specific defense needs," which the Supreme Court rejected in the Steelworkers case, 361 U.S. 39, 43, see also 49-54, 80 S. Ct. 1, 4, 180-182. However, the economies of merchant shipping may not be parallel with those of steel as regards the feasibility of segregating particular operations; and we prefer to rest affirmance upon another finding to which this contention is inapplicable.

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subjecting them to destruction or pilferage. Seamen, unlike shore workers, cannot leave their vessel as a strike protest or in sympathy with a strike without subjecting themselves to serious difficulties. A strike at sea is mutiny and criminal prosecution may ensue. "When a vessel comes into port while a strike is in progress, the members of the crew cannot strike and walk off the ship (unless they have been signed off) without incurring forfeiture of their earned wages and loss of their clothes and effects—the penalties of desertion. This rule is equally applicable to vessels in the coastwise trade."

Without the necessary assurances of returning to the port of ultimate destination and the discharge of the cargo after the 80 days, the injunction would provide merely a selective or partial resumption of work. Ships which could not complete their voyages within the 80 days would, for practical and realistic purposes, remain unproductive. Many would not sail at all—mindful that round the world voyages approximate 120 days in duration, outbound and inbound. Many would be forced to return on the last leg of the voyage without productive or any cargo for the reason that shippers would be reluctant to hazard the ultimate fate of struck cargo at the point of destination. [128]

Obviously, shippers would not undertake cargo commitments under such dire circumstances.

Instead of creating a return to status quo, the injunction, if so interpreted as to its scope and legal effect, would create a catastrophic situation unsound economically, eminently unfair and unjust, and in complete conflict with the mandate of maritime law and the traditions of the sea.

It is significant at this juncture to note the attitude of the cargo shippers in the light of the strike sanctions. It is elemental that without cargo and passengers the owner operators, if forced to sail the vessels under the mandate of the injunction, would merely provide the seamen with a pleasure jaunt. Such could not be the intent and purpose of the benign legislation that this Court is asked to interpret.

The Court, in shaping its decrees and orders, may consider the temper of the times and the environment in which the industry has been placed as the result of a long, enduring strike. The Court will take judicial notice of public sentiment and the reaction of the community through the medium of the press and other accredited sources. Appended to this memorandum may be found

current press computations depicting the critical condition of the maritime industry on the West Coast. [2]

Counsel for the defendant unions finally recognized the necessity of balancing consequences and in their memorandum filed with the Court observed:

"The termination of the strike injunction in the present case cannot, as a practical matter, signal the immediate re-institution of a strike in the event that the dispute is not in the meantime settled. *The injunction continues to have a practical effectiveness so long as vessels which sail under its protection remain at sea.*" (Italics ours.)

Union defendants then propose that vessels should not be permitted to sail on voyages in which more than a half of the scheduled trip time occurs during the post injunction period. And continuing, the defendants conclude:

"An order of the proposed character is plainly authorized by the language of Section 208 of the Act which contemplates the issuance of 'such other orders as may be appropriate.' Indeed, accommodation of the competing policy considerations between the interests of the public, the employer and employees is the proper function of the District Court in issuing a preliminary injunction of this character."

In Brotherhood of Locomotive Engineers v. Mo. K. T. Ry., 363 U.S. 528, 531 532 535, the court said:

"Conditions of this nature traditionally may be made the price of relief when the injunctive powers of the court are invoked and the conditions are necessary to do justice between the parties. . . . The balancing of . . . these [20] competing claims of irreparable harm . . . is, however, the traditional function of the equity . . . court . . ."

In Textile Union v. Lincoln Mills, 353 U.S. 448, 456, 457, the United States Supreme Court held that the Federal Courts must fashion an appropriate rule of substantive law:

> Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem. * * * It is not uncommon for federal courts to fashion federal law where federal rights are concerned.

Union-defendants, in view of their proposed arbitrary formulae, would treat the interpretation to be placed upon the preliminary injunction in a vacuum, completely dissociated from the realities of the problems implicit in the contractual relationship which exists under the articles between the master and the seamen, and the owner operators and the shippers and consignees. Their contention that upon the expiration of the eighteenth day (estimated as June 29, 1962) if the strike issues are not earlier settled, the seamen are privileged to walk off the ship at the first American port leaving the cargo and ship to be strike-bound for an indefinite period of time, is contrary to the traditions, customs, and practices long held in recognition under elementary principles of maritime law.

Accordingly, the court will fashion a supplemental order herein which is to be affixed to the articles when executed by the seamen.

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6. See Steelworkers v. United States, supra, at p. 30, where it is stated:

> "Under the Labor Management [illegible] the District Court is given jurisdiction to enter such decrees as may be appropriate. Congress thereby granted jurisdiction additional to the [illegible]

The order will be filed contemporaneously with the within memorandum and will provide for the duration of the hiring and the express obligations imposed under the articles when executed, regarding the ultimate care and disposition of cargo upon the termination and completion of the voyages engaged in during the 80-day period, with reciprocal provision being made for pay-off by mutual consent.

The motion of the defendants to modify the injunction in the particulars hereinabove discussed, is DENIED.

This Court shall retain jurisdiction for the purpose of granting such other and further relief as may be necessary and proper under Section 208 of the Act.

Dated: April 18, 1962.

GEORGE B. HARRIS
United States District Judge

(Here follow two attachments consisting of clippings from San Francisco newspapers dated April 18, 1962.)

[Endorsed]: Original filed 5:00 P.M., Apr 18 1962, with Clerk, U.S. Dist. Court, San Francisco. 132

[Title of Court and Cause.]

SUPPLEMENTARY ORDER

Application having been made for a supplementary order to be entered pursuant to Section 208(a)(ii) of the Labor Management Relations Act, 1947, it appearing that the order herein set forth is appropriate and necessary to effectuate the preliminary injunction entered in this cause on April 13, 1962, and good cause appearing therefor, IT IS HEREBY ORDERED:

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not alternative to it; an 'other order' may only supplement an injunction; it may not supplant it."

Cf. Southern Steamship Co. v. N.L.R.B., 316 U.S. 31.

1. That defendant Seafarers' International Union of North America, Pacific District, comprising Marine Firemen's Union, Sailors' Union of the Pacific and Marine Cooks and Stewards, Sailors' Union of the Pacific, Pacific Coast Marine Firemen, Oilers, Watertenders [135] and Wipers Association, Marine Cooks and Stewards Union, and each of them, and its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, or any of them, are hereby restrained from insisting, demanding or requesting that the shipping articles prescribed by 46 U.S.C.A. 713 be supplemented or modified by any rider limiting the period of the voyage or granting the seamen any right to terminate their articles prior to the time that the vessel has concluded its normal scheduled return voyage, has discharged and delivered all of its cargo, and has been shifted to a berth designated by the employer for its safe mooring should there be a resumption of strike activity and from in any manner interfering with or affecting the orderly sailing of vessels or schedule for their normal voyage to completion of the work as hereinbefore set forth:

Upon completion of the voyage in accordance with the foregoing, the seamen shall be paid off by mutual consent.

2. That the said defendants and their respective appropriate officers, agents, servants and employees are hereby directed to instruct immediately all persons represented by such unions who have been accepted for employment on vessels to sail pursuant to the provisions of the preliminary injunction entered on April 15, 1962; that they are to sign on normal shipping articles in the form prescribed by statute without the inclusion of any [136] special riders limiting their employment to a period of eighty (80) days;

3. That the standard form of shipping articles executed by the seamen and members of defendant unions during the duration of the preliminary injunction shall contain the express provision that the period of the hiring shall not extend beyond the duration of the particular voyage undertaken and that the articles shall terminate and expire upon the completion of the voyage in the manner particularly provided for in paragraph (2) hereof.

4. That the said defendant unions furnish the necessary replacements for crew members so that any vessel sailing pursuant to the provisions of the preliminary injunction can, without interference by strike activity, continue to operate until all cargo loaded for the return voyage to the United States is taken to its port of destination and is discharged and delivered and the vessel is shifted to an appropriate and safe berth as directed by the employer.

5. That the defendants Seafarers' International Union of North America, Pacific District, comprising Marine Firemen's Union, Sailors' Union of the Pacific and Marine Cooks and Stewards, Sailors' Union of the Pacific, Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, and Marine Cooks and Stewards' Union, and their respective appropriate officers, agents, servants, employes, members and attorneys, and all persons in active concert or participation with them, or any of them, [137] are hereby restrained from in any manner encouraging, ordering, aiding or taking part in any concerted activity of refusing or failing to sign on articles that are provided in accordance with paragraph 3 hereof, or to modify, alter or supplement or change any said articles.

6. That nothing in this order shall be construed to require an individual employe to render labor or service

without his consent nor to make the quitting of his labor or service by an individual employe an illegal act.

7. That a photostatic copy of the within supplementary order shall be affixed to the said articles when executed by the seamen during the duration of the preliminary injunction and made a part thereof, with the same force and effect as if fully and completely set forth therein, and shall constitute notice to the individual members of defendant unions.

8. That a copy of this Supplemental Order shall be served upon the said defendant unions by the United States Marshal as soon as is practicable.

George B. Harris
United States District Judge

Issued April 18, 1962
5:00 P.M. o'clock PST

[Endorsed]: Original filed 5:00 P.M. Apr. 13, 1962, with Clerk, U. S. Dist. Court, San Francisco. [138]

In the United States Court of Appeals
For the Ninth Circuit

No. 17904

Seafarers International Union of North America, Pacific District, Comprising Marine Firemen's Union, Sailors' Union of the Pacific, and Marine Cooks and Stewards; Sailors' Union of the Pacific; Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers Association; and Marine Cooks and Stewards Union,
Appellants,

vs.

United States of America; and Pacific Maritime Association,
Appellees.

On Appeal from Orders of the
United States District Court for the
Northern District of California, Southern Division

Before: HAMLEY, HAMLIN and BROWNING, Circuit Judges.

HAMLEY, Circuit Judge:

This case is before us on appeals from a preliminary injunction, a supplemental order, and an order denying a motion to modify the injunction, all entered under section 208 of the Labor Management Relations Act of 1947 (Act), 29 U.S.C., § 178. The injunction and orders were entered in a suit brought by the United States to enjoin continuation of the 1962 Pacific Coast maritime strike.

Named as defendants were Pacific Maritime Association (Association) and four unions. The Association represents, for collective bargaining purposes, the steamship companies comprising the West Coast maritime industry. The defendant unions are Seafarers [154] International Union of North America, Pacific District, Sailors' Union of the Pacific, Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, and Marine Cooks and Stewards Union.

On March 16, 1962, after the unions and the companies had failed, following negotiation, to agree to terms of new collective bargaining agreements, the unions commenced a strike. If permitted to continue, the strike would have affected some 130 cargo and passenger ships, or over a majority of the American flag vessels operating out of the West Coast. On April 7, 1962, the President invoked the national emergencies procedure set out in sections 206-210 of the Act, 29 U.S.C., §§ 176-180. This led to the instituting of the instant action on April 11, 1962.

On that day the district court entered a temporary restraining order directing the employers to commence the sailing of ships and the seamen to perform their work on them. Defendants were ordered to show cause on April 16, 1962, why a preliminary injunction should not be issued.

Upon issuance of the temporary restraining order officials of the unions notified strikers to return to their ships, and preparations were made for sailings. Almost immediately, however, problems arose with regard to the length of time crewmen would be required to serve under their shipping articles.[1]

1. It is the regular and consistent practice in the maritime industry for shipping articles agreements to be signed for all voyages covered under the contract between Association employees and the seamen represented by defendant unions. The laws of the

The shipping articles which prospective crewmen were asked to sign after entry of the restraining order contained the same provisions as those which seamen had been signing immediately prior to the strike. The period of time covered by such articles is a period continuing until the vessel has concluded its work at a final port of discharge, loading port, or bunkering port selected [155] by the employer, with limitations as to locality not here material, and for a period of time not exceeding nine calendar months.[2]

It is apparent that, regarding the usual form of the shipping articles as ordinarily a commitment only for a complete voyage, it would nevertheless in many cases require crewmen to work beyond the maximum eighty day period that the strike could be enjoined under the Act.[3]

Defendant unions and their members recognized that seamen could not insist upon articles which would entitle them to cease work on the eightieth day if the ship was at sea or was elsewhere than at an American port. But they wanted to be free to strike as soon after the eightieth day as the vessel on which they worked reached an American

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United States require that such articles be signed for most voyages (46 U.S.C., §§ 564, 565, 575); and the use of such contracts is a matter of custom for other voyages. The form of shipping articles contracts is specified by statute. See 46 U.S.C., § 713, Table A.

2. The duration of voyages, however, is ordinarily much less than nine months and it is the usual practice to terminate the shipping articles at the completion of a foreign voyage. When employees remain on board the vessel and sail on a subsequent voyage new shipping articles are signed, again for a term not exceeding nine calendar months.

3. 29 U.S.C., § 180 provides that, upon certification of the results of a secret ballot of the employees on the question of whether they wish to accept the final offer of settlement made by their employers, the Attorney General shall move the court to discharge the injunction, "which motion shall then be granted and the injunction discharged." Under the provisions of 29 U.S.C., § 179, this certification must be made not later than eighty days after entry of the injunction.

port. This would mean that if the eightieth day had run on or after a vessel reached an American port, seamen would be relieved of the obligation of thereafter serving until the vessel had concluded its work at a final port of discharge, loading port or bunkering port.

As seamen would not have this right under the usual form of the articles they, with the encouragement of their unions, declined to sign articles unless a rider was attached reading as follows:

> "It is agreed between the Master and the unlicensed crew that in the event the vessel is in a U.S. port and a bona fide strike or work stoppage occurs and the vessel is involved in such strike or work stoppage, either party to the collective bargaining agreement may terminate these Articles at such port by written notice to the other, in which event the unlicensed members of the crew shall be paid off by mutual [156] consent. If the strike is called by a union which is not the collective bargaining representative of unlicensed crew members, the unlicensed crew members shall be paid transportation from such port to the port of engagement."

The Association would not consent to the addition of such riders to the shipping articles. As a result crews could not be obtained which would permit a resumption of sailings after entry of the restraining order. On April 13, 1962, the district court was advised of this development and a hearing was immediately held. Both the Association and defendant unions told the court at this hearing that they would like to suggest provisions for inclusion in the preliminary injunction which would resolve, one way or the other, the impasse which had been reached concerning the form of shipping articles.

At the request of the Attorney General, made at this hearing, the district court determined to enter a preliminary injunction, and supporting findings of fact and conclusions of law, without awaiting the return-day of April 16, 1962. The requests, made at the April 13, 1962 hearing by the Association and the defendant unions, for inclusion of particular provisions in the injunction order were set for hearing on the originally scheduled return date of April 16, 1962. The provisions contained in the preliminary injunction, entered on April 13, 1962, are summarized in the margin.[4] [157]

At the hearing held on April 16, 1962, the Association asserted that the use of the rider, which crewmen were insisting be added to the articles, would tend to frustrate

4. The preliminary injunction:

(1) Restrains all defendants (a) from continuing, encouraging or aiding a strike or lock-out in the maritime industry, or (b) from interfering with or affecting the orderly resumption and continuance of work in the industry "at the same rates of pay, hours of labor, and other terms and conditions of employment as were in effect immediately prior to March 16, 1962, subject to such modifications as defendants may agree upon, and from taking any action which would interfere with the court's jurisdiction in the premises."

(2) Restrains defendant unions from taking any action which would impede or interfere with due observance of and compliance with the injunction, provided that this paragraph shall not be construed to require an individual employee to render labor or service without his consent; nor to make the quitting of his labor or service an illegal act.

(3) Directs defendant unions (a) to instruct immediately all their members to resume their normal employment, as the ships may be made ready for sailing, (b) to take all action which may be necessary to insure that such instructions are carried out, and (c) to give notice forthwith to their members of the terms of the injunction order.

(4) Directs all defendants to engage in free collective bargaining in good faith for the purpose of resolving their dispute and to make every effort to adjust and settle their differences.

(5) Provides that the injunction shall remain in full force and effect until the further order of the court, and that the court retains jurisdiction for the purpose of granting such other and further relief as may be necessary.

and render meaningless the avowed purposes and design of the Act. They therefore moved for a supplemental order clarifying this issue.

Defendant unions argued in support of the riders. Consistent therewith, they moved for a supplemental order modifying the preliminary injunction to forbid the Association and its members from requiring crew members, during the period of the preliminary injunction, to sign articles which would be binding upon them during the discharge of cargo at any American port after the eightieth day.

The unions also asked for inclusion, in the supplemental order, of provisions which would modify the preliminary injunction to: (1) Require the Association and its members to pay off their crews on mutual consent and discharge them immediately upon entry in any American port after eighty days from April 11, 1962, and upon the making of their vessel safe and secure; and (2) Prohibit the Association and its members from sailing any vessel employing crew members represented by defendant unions from any American port upon a voyage in which more than one half of such voyage, as determined from the date of departure from such American port to the scheduled date of arrival at any American port, is scheduled to occur after the eightieth day.

After receiving affidavits and evidence and hearing argument at the April 16, 1962 hearing, the district court, on April 18, [158] 1962, filed a supplemental order containing provisions which are summarized in the margin.[5]

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5. The supplemental order:

(1) Restrains defendant unions from (a) demanding that the shipping articles be supplemented by any rider limiting the period of the voyage or granting seamen any right to terminate their articles prior to the time that the vessel has concluded its normal scheduled return voyage, has discharged and delivered all of its cargo, and has been shifted to a berth designated by the employer for its

At the same time that this supplemental order was filed, the court filed a memorandum opinion and order denying the motion [129] of defendant unions to modify the injunction in the respects requested by the unions, as described above.

The Marine Firemen's Union, on April 26, 1962, and the remaining defendants on April 30, 1962 appealed from the preliminary injunction of April 16, 1962, and the two orders of April 18, 1962. The appeals were consolidated

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safe mooring should there be a resumption of strike activity, and (b) in any manner interfering with or affecting the orderly sailing of vessels on schedule for their normal voyage to completion of the work described above. Upon completion of the voyage the seamen shall be paid off by mutual consent." We have divided this paragraph into [a] and [b] for convenience of discussion.

(2) Directs defendant unions to instruct immediately their members who have been accepted for employment on vessels to sail pursuant to the provisions of the preliminary injunction of April 13, 1962, and to sign on normal shipping articles in the form prescribed by statute without the inclusion of the described rider.

(3) Provides that the standard form of shipping articles executed during the duration of the preliminary injunction shall contain the express provision that "the period of the hiring shall not extend beyond the duration of the particular voyage undertaken. * * *"

(4) Provides that defendant unions shall furnish the necessary replacements for crew members "so that any vessel sailing pursuant to the provisions of the preliminary injunction can, without interference by strike activity, continue to operate until all cargo loaded for the return voyage to the United States is taken to its port of destination and is discharged and delivered and the vessel is shifted to an appropriate and safe berth as directed by the employer."

(5) Restrains defendant unions from encouraging or taking part in any concerted activity of refusing or failing to sign on articles in the form referred to in paragraph (3) of the supplemental order, or to modify or alter those articles.

(6) Provides that nothing in the supplemental order shall be construed to require an individual employee to render labor or service without his consent nor to make the quitting of his labor or service an illegal act.

(7) Provides that a copy of the supplemental order be affixed to the articles when executed by seamen during the duration of the preliminary injunction * * * and made a part thereof, with the same force and effect as if fully and completely set forth therein, and shall constitute notice to the individual members of defendant unions."

and on motion of the parties, made on May 3, 1962, were expedited. Oral argument was had in this court on May 28, 1962.

Appellants argue that under paragraphs 1(a) and (b), 2, 4 and 5 of the supplemental order, injunctive sanctions are imposed upon the unions or their members which will remain in effect after the preliminary injunction has been mandatorily discharged on or before the eightieth day, and that, in so providing, the district court exceeded its jurisdiction. They also argue that the preliminary injunction should have been modified in the respects which they had requested in order to avoid inequitable delay beyond the eigthieth day before employed crewmen could join in any resumption of the strike.

The United States, appearing here as an appellee, defends some of the provisions of the supplemental order which appellants challenge, and also defends the order denying appellants' request for modification of the preliminary injunction. Without having appealed, however, the United States questions, on the same grounds as do appellants, the provisions of paragraphs 1(b) and 4 of the supplemental order.

Appellee Association defends the supplemental order in its entirety and also the order denying appellants' request for modification of the preliminary injunction.

In enacting the Labor-Management Relations Act of 1947, Congress fashioned elaborate procedures to cope with strikes or lock-outs which have the effect of imperiling the national health or safety. The dual purpose of these procedures, incorporated in sections 206-210 of the Act, 29 U.S.C., §§ 176-180, is "* * * to alleviate, at least temporarily, a threat to the national health or safety; and * * * to promote settlement of the underlying dispute * * *."

United Steel Workers of America v. United States, 361 U.S. 39, 51, concurring opinion of Justices Frankfurter and Harlan. [160]

The courts have a relatively minor role to play in these procedures. Of fifteen separate actions required to be taken,[6] the courts are involved in only two—the fifth step, in which the courts are required to issue an injunction if certain findings are made, and the fourteenth step, in which the courts are required to discharge the injunction.

In fulfilling the indicated dual purpose of the Act, Congress looked primarily to individuals, officials, and institutions other than the courts—the President, board of inquiry, Federal Mediation Service, Attorney General, National Labor Relations Board, Congress, public and, above all, the disputing parties.

The function of the court in this statutory plan is limited not only in the respect mentioned, but also with regard to the kind of orders which may be enforced.

First, the only purpose for which an injunction may be entered under 29 U.S.C., § 178(a)(iii) is to enjoin a strike or lock-out, or the continuing thereof which, if permitted to occur or to continue, would imperil the national health or safety. *Second*, the only function which such an injunction may serve is to maintain the *status quo* as it existed before the actual or threatened strike or lock-out.[7] *Third*

6. See 29 U.S.C., § 176-180.

7. Thus, in the *Steelworkers* case, the court said at page 41 that the "basic purpose of Congress in providing for the issuance of such injunctions was "to see that vital production should be *resumed* or *continued* for a time while further efforts were made to settle the dispute." " (Italics added.) Later in the same opinion and to the same effect, the court said: "* * * But the statute does recognize certain rights in the public to have *continued* for a time production in industries vital to the health or safety." " Page 43 (Italics added.)

in considering whether to grant or deny such an injunction, the courts may not enter into general inquiries of a character which would be entirely appropriate under other circumstances. *Fourth*, if an injunction is issued it must be [161] industry-wide, and may not be fashioned to permit selective relief on some basis deemed adequate to meet the needs of the national health and safety. *Steelworkers* case, at page 43. *Fifth*, the injunction must be discharged not later than eighty days after its issuance. 29 U.S.C., §§ 179-180.

Subject only to these limitations as to purpose, function, scope and duration; however, the courts have full power to fashion an injunction which will meet the situation. In this respect, as Justices Frankfurter and Harlan said in their concurring opinion in the *Steelworkers* case, at page 52, section 208 of the Act, 29 U.S.C., § 178,

> "* * * is not to be construed narrowly, as if it were merely an exception to the policies which led to the restrictions on the use of injunctions in labor disputes embodied in the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C., §§ 101-115. Totally different policies led to the enactment of the national emergency provisions of the 1947 act."

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8. For example, the courts may not inquire as to whether national labor policy will be served, or whether other remedies are available, or as to the effect of such an injunction upon the collective bargaining process in the particular case. Nor may they consider the merits of the parties' position or the conduct of their negotiations. The detailed procedures outlined in the Act "* * * represent a congressional determination of policy factors * * *" *Steelworkers* case, at page 41. All that is left for the courts in deciding whether to issue an injunction, is a determination as to whether a strike or lock-out, threatened or actual, affects an industry of the kind described in the statute in such a manner that, if permitted to occur or continue, will imperil the national health or safety. If findings of this kind are made, the court has no alternative but to issue the injunction. 29 U.S.C., § 178(a) (i), (ii).

Section 17(a)(iii) confers jurisdiction on the court not only to issue an injunction against a strike or lock-out, but also "* * * to make such other orders as may be appropriate." The context in which the provision for "other" orders appears, and the limiting word "appropriate," indicate to us that this grant of power was expressly included to insure that the courts would not be prevented from issuing such ancillary orders as may be necessary to fully effectuate and implement the basic injunction against the strike or lock-out. We do not construe this as granting a separate equitable jurisdiction which would be free of the restraints, including the restraint as to duration, imposed on the issuance of the basic injunction.[9] [162]

In our opinion a supplemental order which has the practical effect of extending the time injunctive sanctions are in effect beyond that permissible under the injunction itself, or which is designed to serve purposes or functions which the injunction may not serve is inconsistent with the manifested Congressional intent that upon the discharge of the injunction the parties should be returned to the *status quo* as it existed immediately preceding the invocation of the national emergency provisions. This is true notwithstanding the fact that the court may believe that such extended duration or additional purposes or functions would be necessary in order to obtain a full resumption of production during the eighty-day period.

9. In their concurring opinion in the *Steelworkers* case, at page 59, Justices Frankfurter and Harlan stated that in authorizing the issuance of "other" orders, Congress provided a jurisdiction "additional" to the power to grant an injunction. They also indicated, however, that such an order may only "supplement" the injunction, it may not "supplant" it. The over all meaning thus conveyed is consistent with our view that this is an ancillary, not an independent, jurisdiction.

The statutory limitation upon the duration of injunctions issued under the Act is spelled out in words of command. Only such production as may be compelled by injunctive sanctions limited to eighty days, may be achieved either under the injunction or any order supplemental thereto.

It is immaterial that, due to the uniqueness of the industry or prevailing economic conditions this may be less than full production. Congress has not provided the courts with an elastic jurisdiction to meet such special problems. It has chosen to draw the line at eighty days. Economic waste and productive inefficiency resulting from such abrupt termination of the injunction may be appropriate considerations in urging amendment of the Act, but they do not provide the court with jurisdiction which has been denied by Congress.

Having stated the principles which will govern us in disposing of this appeal we now turn to a discussion of the particular provisions of the supplemental order which are challenged.

Paragraphs 1(a), 2 and 5 of the supplemental order,[16] provide in effect that appellant unions shall not insist upon a rider to the shipping articles of the kind quoted earlier in this opinion, shall instruct their members to sign articles without such rider, [163] and shall not encourage or take part in any concerted activity of refusing or failing to sign articles in the usual form without such rider.

The restraints and duties thus placed upon appellant unions are expressly effective only during the eighty days the injunction may be in effect. Appellants argue, however, that by requiring that the articles be in their usual form, free from such a rider, prospective crew members who sign the articles are required to work after reaching an Amer-

16. See note 5 above.

ican port, and after the eighty day period, if the vessels on which they are employed require additional time to unload cargo and reach final destination.

One misgiving which appellants may have concerning these provisions can be quickly dispelled: If a vessel reaches an American port on or after the eightieth day, and crew members who have signed articles in the usual form then leave the vessel and go on strike before the ship completes unloading and reaches final destination, such crewmen do not thereby violate the injunction or supplemental order and are not subject to contempt proceedings.

It is nevertheless true that the supplemental order employs injunctive sanctions to obtain signatures to shipping articles which contractually bind the signers to serve for periods which may extend far beyond the eightieth day. But since these are the kind of articles the crewmen were signing immediately prior to the calling of the strike, the provisions in question do no more than maintain the *status quo*. This, as we have held, is permissible under § 178 and, in fact, required to effectuate the Congressional purpose.

We therefore conclude that the provisions of paragraphs 1(a), 2 and 5 of the supplemental order are "appropriate" within the meaning of the statute, and that the district court had jurisdiction to prescribe them[11] [164].

On the same reasoning we hold that the court did not err in refusing to modify the injunction to prohibit sailings where less than half of the voyage would occur before the eightieth day.

Paragraph 1(b) of the supplemental order,[12] could be

11. We necessarily deny appellants' request that this court enter an order which would in effect modify articles entered into since issuance of the injunction, to release crewmen from their contractual duty to serve beyond the eightieth day.

12. See note 5 above.

construed as pertaining only to the restraint placed upon defendant unions under paragraph 1(a) with regard to the form of shipping articles. However, it is also open to the construction that, apart from the signing of articles, the unions are thereby enjoined from interfering with or affecting the orderly sailing of vessels on schedule for their normal voyage to completion of the work as described in paragraph 1(a).

If so construed, it is apparent that the restraint thereby placed upon the unions might extend beyond the eightieth day notwithstanding the vessel has reached an American port. Thus the union would be enjoined from calling a strike which would interfere with or affect the sailing of a vessel scheduled to sail from Los Angeles to San Francisco on the eighty-first day, in order to discharge cargo and reach final destination. This application of paragraph 1(b), which all parties appear to regard as not only possible, but intended, finds additional support in the concluding words of paragraph 1(a), "* * * should there be a resumption of strike activity * * *"

The Association, in effect conceding that the injunctive effect of paragraph 1(b), as so construed, could continue after the eightieth day, defends it as necessary in order to assure "full production" during the eighty-day period. It argues that shippers and passengers will not use vessels which will reach American ports on return voyages after the eightieth day, unless they are assured that their freight and baggage can be promptly unloaded at the destination intended.

In the Association's view, this prospective loss of cargo and passengers would render sailings from American ports economically infeasible towards the latter part of the eighty-day period. It would therefore be necessary, they

argue, to cancel such sailings, thereby curtailing the "full production" which, in their view, the injunction is expected to assure. [165]

The Association acknowledges that, since September, 1961, when the last collective bargaining agreement expired, shipping companies on the West Coast have been operating against the hazard of a possible strike. But they point out that never before this strike have the unions struck cargo, and hence never before did prospective shippers and passengers realize the risk they were taking. Thus, while the hazard, insofar as the legal right to strike cargo is concerned, is no greater than before, it is urged that it now has more effect than formerly in the direction of discouraging traffic.

The district court accepted this view and, insofar as the economic implications are concerned, so do we. Under the principles stated above, however, such factors do not provide a jurisdictional basis for extending injunctive sanctions beyond the eightieth day. As between the desired achievement of full production during the eighty days, and the termination of all vestiges of judicial restraint on the eightieth day, the former must give way to the latter. The district court was without jurisdiction to enjoin appellant unions from interfering with or affecting the orderly sailing of vessels on schedule for their normal voyage to completion of the voyage, insofar as such union activity might take place after the discharge of the preliminary injunction.

The conclusion just stated is equally applicable with respect to paragraph 4 of the supplemental order.[13] The district court was without jurisdiction to direct appellant unions to furnish the necessary replacements for crew

13. See note 5 above.

members, insofar as this would require the unions to engage in such activity after the discharge of the injunction.

The provisions of paragraphs 1(b) and 4, which we have held to be invalid insofar as they have injunctive effect beyond the eightieth day, are entirely appropriate insofar as union activity during the eighty-day period is concerned. The extent to which these provisions are invalid under the present form of the order, will be obviated by inclusion in the order of a provision terminating the order upon the discharge of the injunction.

We deem it proper to remind the parties that the national emergency procedures of the Labor-Management Act of 1947, [166] which have now been invoked, place a mandatory responsibility upon them to make every effort to adjust and settle their differences. See 29 U.S.C., § 179(a).[14] It appears to us that their prime preoccupation now should not be with regard to what will happen if the strike is resumed after the eightieth day, but as to how that blow to the national health and safety may be avoided.

The order of April 13, 1962, granting the preliminary injunction, and the order of April 16, 1962, denying the motion of appellant unions to modify the preliminary injunction in certain respects, are affirmed. The motion of appellants, made in this court, for an order modifying outstanding shipping articles, signed after issuance of the supplemental order of April 16, 1962, is denied. The latter order is affirmed, provided that there be added thereto a provision terminating that order upon the discharge of the injunction. The cause is remanded so that this may be done.

14. We have been advised that this is the nineteenth time that the national emergency procedures have reached the point of issuance of an injunction, and that in all but four of the previous eighteen instances, the labor dispute was settled before discharge of the injunction on the eightieth day.

The parties will bear their own costs on this appeal. The certified judgment of this court will issue on June 4, 1962 unless a petition for rehearing is filed on or before 12:00 o'clock noon on that day.

[Endorsed]: Opinion Filed May 29, 1962.
Frank H. Schmid, Clerk. 167

[Title of Court and Cause]

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court of April 13, 1962, granting the preliminary injunction in certain respects, are affirmed. The motion of appellants, made in this Court, for an order modifying outstanding shipping articles, signed after issuance of the supplemental order of April 16, 1962, is denied. The latter order is affirmed, provided that there be added thereto a provision terminating that order upon the discharge of the injunction. It is ordered that this cause be and hereby is remanded to the said District Court so that this may be done. It is further ordered that the parties will bear their own costs on this appeal.

[Endorsed]: Judgment Filed and entered May 29, 1962.
Frank H. Schmid, Clerk. 168

Office-Supreme Court, U.S.
FILED
JUN 8 19
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 1010

PACIFIC MARITIME ASSOCIATION,

Petitioner,

vs.

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, PACIFIC DISTRICT, comprising Marine Firemen's Union, Sailors' Union of the Pacific and Marine Cooks and Stewards, SAILORS' UNION OF THE PACIFIC, Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers Association, and Marine Cooks and Stewards Union, and UNITED STATES OF AMERICA,

Respondents.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI

WARNER W. GARDNER,
LAWRENCE J. LATTO,
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 1010

PACIFIC MARITIME ASSOCIATION,

Petitioner,

vs.

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, PACIFIC DISTRICT, comprising Marine Firemen's Union, Sailors' Union of the Pacific and Marine Cooks and Stewards, SAILORS' UNION OF THE PACIFIC, Pacific Coast Marine Firemen, Oilers, Watertenders, and Wipers Association, and Marine Cooks and Stewards Union, and UNITED STATES OF AMERICA,

Respondents.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests this Court to consider two reasons for granting the writ of certiorari in addition to those set forth in the original petition.

A. *The Judgment Below Subverts the Policy of the Taft-Hartley Act to Create Conditions for Effective Collective Bargaining During the Period in Which the National Emergency Injunction is in Effect.*

In our original petition we argue that Sections 206 to 210 of the Taft-Hartley Act embody a Congressional policy to provide for full production and normal operations during the period in which an injunction issued pursuant to

Section 208(a) is in effect and that the Court of Appeals erred in finding this policy outweighed by what it considered to be a Congressional direction to terminate "all vestiges of judicial restraint on the 80th day . . ." (App. p. 47).[1] The District Court also rested its decision to issue the supplementary order upon a second and separate policy sought to be achieved by the Taft-Hartley Act. We submit that this policy demonstrates a legislative purpose quite inconsistent with the Court of Appeals' mechanical view that the Congress intended an inflexible ban upon any judicial action after the 80th day, and that as applied to the circumstances of the maritime industry the mechanical view of the court below entirety frustrates the Congressional purpose.

1. *The Purpose of the Congress.* The conditions that must be found to exist before an injunction may issue under Section 208 relate solely to the existence of a situation which, if permitted to continue, will imperil the national health or safety—to the existence, in essence, of a national emergency. Once the necessary statutory findings have been made, the District Court is required to issue the injunction, *Steelworkers* v. *United States*, 361 U. S. 39. The 80-day period during which the injunction was to continue, commonly known as the "cooling-off" period, was provided to afford the parties the opportunity to resume the processes of collective bargaining under the pre-existing conditions of employment and in an atmosphere permeated with the pressure of public opinion upon both parties to reach a voluntary settlement.

Implicit in this statutory arrangement is a Congressional determination that conditions conducive to genuine and effective collective bargaining be maintained during

[1] References to the appendix are to the appendix to the original petition for writ of certiorari.

this period and that the existence of the injunction is not to alter radically the respective bargaining positions of the parties. There was never any thought that the injunction should operate to provide an additional weapon either to the employer or to the employees. For example, a provision in the injunction that the employees should return to work at half pay would clearly be invalid. Similarly, a provision in the injunction issued in the case at bar that the ship owners must limit the carriage of cargo to half that ordinarily carried would be no less invalid.

Much less could the Congress have intended that the existence of the "cooling-off" period serve in itself to introduce new and serious controversies between the parties, or that where there was one congeries of insoluble disputes at the beginning of the 80-day period there should be two at its end.

2. *The Application Here.* The Court of Appeals' decision here strikes from the supplemental order of the District Court all assurance that cargo loaded in foreign ports for discharge in the United States will be unloaded from the vessels. In obvious and necessary consequence, shippers are unwilling to commit their cargoes to any vessel affected by this strike and injunction if it arrives after June 30. As stated by the cross-petitioning union in No. 1017 (p. 15), vessels which started out during the 80-day period will be arriving from time to time up until the middle of September. Each, obviously, will have little or no cargo aboard. Each voyage will, with full voyage cost and half-voyage freight, be a financial disaster.

As the ships arrive new controversies will be generated between employer and employee. If the unions picket the vessel the seamen aboard are, in our view, guilty of mutiny and desertion if they join with their union before discharge of cargo and the picketing union is guilty of in-

ducing a breach of the Shipping Articles and of the prohibitory statutes (see petition in No. 1017, p. 12; *infra*, p. 8). If, as we should anticipate, the unions are of a different view, there immediately arises new controversy and new litigation. The "cooling-off" period is, by automatic termination of the courts' powers on the 80th day, converted into a "heating-up" period. A labor dispute that was insoluble when the injunction issued is made doubly so when it terminates.

The decision that the court cannot after the 80th day enforce the Shipping Articles which it protected as a part of the status quo in its original injunction thus reaches back both to subvert that injunction and to destroy the status quo. So far as the employers are concerned, the holding of the Court of Appeals that the District Court may not protect the integrity of its injunction by an order affecting the few days at the end of a voyage has the practical effect of modifying the basic injunction for much if not all of the period in which it was in terms effective.

The District Court found it necessary to exercise its authority to enter such other orders as may be appropriate (authority which, in our view, the Court possesses independently of the express statutory grant in Section 208(a)(ii), see, *B'hood of Locomotive Engineers* v. *Mo. K. T. Ry.*, 363 U. S. 528) in order to restore the status quo, so that the grant of the injunction would not, of itself, operate to impose enormous losses upon one of the parties, with a consequent pressure to capitulate, while leaving the other party relatively untouched. It said:

> "Without the necessary assurances of returning to the port of ultimate destination and the discharge of the cargo after the 80 days, the injunction would provide merely a selective or partial resumption of work. Ships which could not complete their voyages

within the 80 days would, for practical and realisite purposes, remain unproductive. Many would not sail at all—mindful that round-the-world voyages approximate 120 days in duration, outbound and inbound. Many would be forced to return on the last leg of the voyage without productive or any cargo for the reason that shippers would be reluctant to hazard the ultimate fate of struck cargo at the point of destination.

. . . . . .

"It is significant at this juncture to note the attitude of the cargo shippers in the light of the strike sanctions. It is elemental that without cargo and passengers the owner-operators, if forced to sail the vessels under the mandate of the injunction, would merely provide the seamen with a pleasure jaunt. Such could not be the intent and purpose of the benign legislation that this Court is asked to interpret." (App. p. 25.)

The question of the scope of the District Court's authority to issue supplementary orders in connection with a Taft-Hartley injunction is, we urge, one of importance, deserving the consideration of this Court. It is fundamental to the operation of the Act in the maritime industry, where a voyage can realistically be commenced only if the conditions of its termination are predictable. It is, unhappily, the maritime industry where the Taft-Hartley injunction has had its most frequent use. As both petitioner and respondent have pointed out, the alternative is between immediate review of the Court of Appeals' judgment and no review at all, since all agree that the issues will be mooted before the case can be heard at the 1962 Term.

B. *The District Court Has Jurisdiction to Enter the Supplementary Order Independently of the Jurisdiction Conferred by Section 208 of the Taft-Hartley Act.*

The District Court recognized that the injunction it had issued, if unaccompanied by the supplementary order, would be "in complete conflict with the mandate of maritime law and the traditions of the sea," and that the assertion of the right to "walk off the ship at the first American port, leaving the cargo and ship to be strike-bound for an indefinite period of time, is contrary to the traditions, customs and practices long held in reverence under elementary principles of maritime law." And in support of the issuance of its supplementary order, the District Court relied on cases such as *B'hood of Locomotive Engineers* v. *Mo. K. T. Ry.*, 362 U. S. 528, and *Textile Union* v. *Lincoln Mills*, 353 U. S. 448, which treat of the equity jurisdiction of the Court and not the special grant of jurisdiction found in Section 208. It seems clear enough that the District Court regarded the supplementary order as having been issued, at least in part, in reliance upon its general equity jurisdiction.

1. *General Jurisdiction.* It seems to us plain enough that an application for such an order, if made in a separate proceeding, would involve a suit arising under the laws of the United States governing the relationships between seamen and shipowners. See, *B'hood of Railway Trainmen* v. *N. Y. Cent. R. Co.*, 246 F. 2d 114 (C.A.6); *Toledo P. & W. RR.* v. *B'hood of Railway Trainmen*, 132 F. 2d 265 (C.A.7), rev'd on other grounds, 321 U. S. 50; *Telegraphers* v. *Chicago & N. W. R. Co.*, 362 U. S. 330, 364 (dissenting opinion). The fact that the application for an order was made by petitioner in an action instituted by the United States rather than by the petitioner itself can hardly be thought to deprive the Court of the power to act.

Nor can there be much doubt, apart at least from the Norris-LaGuardia Act, that a court of equity has power to enjoin a breach, or inducing a breach, of the Shipping Articles to prevent irreparable and large injury to steamship operators, shippers and consignees.

2. *The Norris-LaGuardia Act.* This Court, in *Brotherhood of Railroad Trainmen v. Chicago River & I. RR. Co.*, 353 U. S. 30, held that the Railway Labor Act provisions dealing with the adjustment of minor disputes evidenced a Congressional intent to preclude resort to a strike which would frustrate the purposes of the Act to establish a system of compulsory arbitration of such disputes. The Norris-LaGuardia Act (29 U.S.C. Sec. 101, *et seq.*) bars against injunctions was therefore not applicable, since the strike would amount to "a plain violation of a basic command of the Railway Labor Act 'adopted as a part of a pattern of labor legislation.' 353 U. S. 30, 42." *Telegraphers v. Chicago & N. W. R. Co.*, 362 U. S. 330, 339.

The historic pattern of legislation governing the relationships between seamen and their employers is far more detailed and comprehensive than anything encountered in other industries. On the one hand this reflects a policy of affording specialized protections to seamen[2] and on the other a recognition of the fact that undivided authority of the master and strict discipline must obtain where "the lives of passengers and crew as well as the safety of ship and cargo are entrusted to the master's care." *Southern S. S. Co. v. Labor Board*, 316 U. S. 31, 38.

[2] For example, Federal statutes and applicable regulations require that any vessel that sails carry an adequate crew (46 U.S.C. Sec. 672). The number of seamen and specific ratings is specified in the vessel's certificate of inspection issued by the Coast Guard in accordance with the applicable law (46 U.S.C. Sec. 672). A vessel can proceed to sea only if the required number of seamen and the appropriate ratings are aboard (46 U.S.C. Sec. 676). There are elaborate requirements with respect to such matters as medicines, clothing, heat, hours and watches, wages and return transportation to this country (46 U.S.C. Sec. 651-692, 1131).

As a part of this comprehensive regulation of the employment relationship, shipping articles must be executed by the seamen for most foreign voyages (46 U.S.C. 564, 565, 575), and it has been the regular and consistent practice for shipping articles to be signed for all voyages covered under the contract between PMA employers and the seamen represented by respondent unions (R. 78). The form of the shipping articles is specified by statute (46 U.S.C. Sec. 713, Table A) and the form of the "discharge"—giving evidence that the employee has fully performed his duties under his articles and that the employer in return has fully performed his obligations to the seamen—is also prescribed by law (46 U.S.C. Sec. 713; Table B). The time that employees must be paid their wages is set forth by statute (46 U.S.C. 591).

The shipping articles prescribed by law impose a specific obligation upon the seaman to comply with the lawful commands of the master and of his superior officers during the term of the articles. Penalties are imposed upon seamen who fail to comply with such lawful orders of the master (46 U.S.C. Sec. 595-701; 18 U.S.C. 2196), and penalties are imposed upon seamen who are guilty of mutiny or desertion or of refusing to go to sea with the vessel, quitting the vessel without leave, etc. (46 U.S.C. 701; 18 U.S.C. Sec. 2192, 2193). The employer may defer the payment of a substantial part of the compensation of any seaman until 24 hours after the cargo has been discharged or within 4 days after the seaman has been discharged, whichever first happens (46 U.S.C. 596).

This Court has held that a strike by seamen while away from their home port, even if safely docked elsewhere, would constitute mutiny, *Southern S. S. Co.* v. *N.L.R.B.*, 316, U. S. 31, and lower courts have held that such action would also constitute desertion, calling forth the penalties pre-

scribed therefor, *Clayton v. Standard Oil of N. J.*, 42 F. Supp. 734 (S.D. Tex.); *The Youngstown*, 110 F. 2d 968 (C.A. 5).

These several statutory provisions look toward the completion of a voyage and the unloading of cargo, and express the objective of the Congress to achieve the orderly completion of a voyage once begun. They reflect in this regard traditions of the sea of very long standing. See, Norris, *Law of Seamen* (1951, Sec. 176, p. 187). A strike designed to prevent compliance with the shipping articles, and to breach the term of employment fixed under Congressional sanction, is just as direct a threat to the statutory governance of maritime employment as was a strike designed to subvert the purposes of the Railway Labor Act. The Railway Labor Act fixed the pattern by which disputes were to be settled; the seamen statutes and maritime customs fix the time when the labor dispute may arise. We submit, then, that the District Court had power to issue its supplementary order upon the application of petitioner without regard to the grant of jurisdiction of Section 208 of the Taft-Hartley Act. Nothing in that Act withdraws jurisdiction enjoyed prior to its adoption.

3. *The Issue Can and Should Be Decided Here.* Although this basis for the entry of a supplementary order was not part of the pleadings below, this Court may, under its prior decisions, adopt it as a ground for reversal of the Court of Appeals and for reinstatement of the supplementary order issued by the District Court. See the cases cited at pp. 837 and 838 of Robertson & Kirkham, *Jurisdiction of the Supreme Court of the United States* and *Ecker v. Western Pacific R. Corp.*, 318 U. S. 448, 489. The issues here are of critical importance to a vital industry of the United States and to its employees, and the questions

should be decided on the basis of whether the jurisdiction of the District Court exists and not upon whether the proper formula has been employed in invoking that jurisdiction.

For the reasons given above as well as those originally set forth, this Court should grant the writ of certiorari prayed for by petitioner.

Respectfully submitted,

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Dated: June 8, 1962.

MOTION FILED JUN 6 1962

In the Supreme Court of the United States

OCTOBER TERM, 1961

~~No.~~ No. 1017

PACIFIC MARITIME ASSOCIATION,
Petitioner,

vs.

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, PACIFIC DISTRICT, et al,
Respondents.

PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS AND WIPERS ASSOCIATION,
Cross-Petitioner,

vs.

PACIFIC MARITIME ASSOCIATION, and UNITED STATES OF AMERICA,
Cross-Respondents.

Motion to Expedite

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In the Supreme Court of the United States

OCTOBER TERM, 1961

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PACIFIC MARITIME ASSOCIATION,
Petitioner,

vs.

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, PACIFIC DISTRICT, et al.,
Respondents.

PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS AND WIPERS ASSOCIATION,
Cross-Petitioner,

vs.

PACIFIC MARITIME ASSOCIATION, and UNITED STATES OF AMERICA,
Cross-Respondents.

Motion to Expedite

The Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, cross-petitioner herein, moves for an order expediting proceedings on the cross petition by requiring:

1. That responses to the cross petition, if any, be filed within seven days after the filing and service of the cross-petition:

2. That oral argument, if the cross-petition is granted, be heard this term;

3. That dates for filing of briefs be specially scheduled, consistent with a hearing of the case this term;

4. That the Rules of the Court relating to the printing of the record be dispensed with, and that the case be heard and determined upon the certified copy of the original record on file with the Court;

5. That responses to this motion, if any, be filed within three days after the filing and service of this motion.

In support of the foregoing motion, it is respectfully shown as follows:

I.

Pacific Maritime Association, appellee in the court below, has filed a petition for certiorari in this case, and an accompanying motion to expedite its handling in a manner similar to the request contained in the present motion. The Marine Firemen's Union does not oppose the granting of Pacific Maritime Association's motion, except that the dates requested therein for the filing of briefs and hearing oral argument are too early to be practicable.

II.

For the reasons stated in the cross-petition, effective determination of the issues presented in this case requires hearing to be scheduled this term. If the usual Rules are to be followed respecting the time for filing responses to this motion and to the cross-petition, and the printing of the record, the question presented will become moot before the Court will have opportunity to consider whether the cross-petition should be granted. As also shown in the cross-petition, this case presents a question appropriate for determination by this Court.

III.

Authority to shorten the time for the filing of responses and briefs, and to dispense with the printing of the record, may appropriately be exercised in cases of this character. *United Steelworkers v. United States*, 361 U.S. 44; *Aaron v. Cooper*, 358 U.S. 5.

WHEREFORE, it is respectfully submitted that the motion to expedite be granted.

Dated: June 5, 1962.

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 1017

PACIFIC MARITIME ASSOCIATION,
Petitioner,

vs.

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, PACIFIC DISTRICT, et al.,
Respondents.

PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS AND WIPERS ASSOCIATION,
Cross-Petitioner,

vs.

PACIFIC MARITIME ASSOCIATION, AND UNITED STATES OF AMERICA,
Cross-Respondents.

Memorandum of Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association in Response to Petition for Writ of Certiorari and Cross-Petition of Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No.

PACIFIC MARITIME ASSOCIATION,
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vs.

SEAFARERS INTERNATIONAL UNION of NORTH AMERICA, PACIFIC DISTRICT, et al.,
Respondents.

PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS AND WIPERS ASSOCIATION,
Cross-Petitioner,

vs.

PACIFIC MARITIME ASSOCIATION, AND UNITED STATES OF AMERICA,
Cross-Respondents.

Memorandum of Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association in Response to Petition for Writ of Certiorari

and

Cross-Petition of Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

The Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association, hereafter called Marine Firemen's Union, files this memorandum in response to the petition

of Pacific Maritime Association for a writ of certiorari, and in addition herewith cross-petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Ninth Circuit in this proceeding insofar as it affirms the supplementary order issued by the district court.

OPINIONS BELOW

The opinion of the court below has not been reported, and is printed in full at pp. 33-49, Appendix B of the Petition of Pacific Maritime Association. The memorandum opinion of the district court also has not been reported, and is printed at pp. 16-28, Appendix B of the Petition of Pacific Maritime Association.

JURISDICTION

The judgment of the court below (P.M.A. Pet. App. B, p. 49)[1] was entered on May 29, 1962. No petition for rehearing has been filed at the time of the preparation of this cross-petition. The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1254(1), and under Section 208(c), of the National Labor Relations Act, as amended (29 U.S.C. 178(c)), hereafter called the Act.

QUESTIONS PRESENTED

The question presented by the petition of Pacific Maritime Association may be stated as follows:

Whether the national emergency provisions of the Act authorized the district court to issue a supplemental order

1 References to the proceedings in the district court and the court below which have been printed in the Appendix to Pacific Maritime Association's petition are hereafter designated "P.M.A. Pet. App." References to the original record on file with the Court are designated "R", and are to the page numbers appearing in ink at the bottom center of each page. References to the transcript of oral proceedings are designated "Tr.", and by the date of the proceedings and page.

restraining strike activity during the period which follows the discharge of the principal injunction because, in the opinion of the court, such order would insure a resumption of full business operations during the period of the principal injunction.

The question presented by the cross petition may be stated as follows:

Whether the district court was authorized, in the exercise of its national emergency injunction powers under the Act, to prescribe a form of shipping articles for execution by seamen who sail during the period of the injunction which expressly precludes them from resuming strike activity for a period of time upon their return to American ports following the discharge of the injunction.

STATUTES INVOLVED

The relevant provision of the Act are printed at pp. 1-8, Appendix A to Pacific Maritime Association's petition.

STATEMENT

A. The Maritime Strike, and the Issuance of the Restraining Order Under the National Emergency Provisions of the Act.

This case arises out of a strike begun on March 16, 1962, instituted by the unlicensed seagoing personnel of the west coast maritime industry to obtain a new collective bargaining agreement. The strike followed unsuccessful negotiations between Pacific Maritime Association, on behalf of the shipowners, and three labor organizations representing the employees,[2] after the expiration on October 31, 1961, of the most recent agreement between them (R. 5, 139, 146).

2 All three organizations, which bargain together as Seafarers International Union of North America, Pacific District, are named as respondents in Pacific Maritime Association's petition. These organizations are collectively referred to herein as the Unions.

The strike took hold piecemeal, initially affecting only vessels which were in American ports on March 16, 1962, and thereafter tying up additional vessels as they returned to American ports from voyages on the high seas. On April 7, 1962, the President of the United States issued an Executive Order declaring that the strike affected a substantial part of the maritime industry, and that if permitted to continue would imperil the national health and safety (R. 11). This order set in motion the procedures under the national emergency provisions of the Act for the issuance of an injunction against continuance of the strike. Following compliance with the remaining procedural requirements, a temporary restraining order was applied for and obtained by the Government on April 11, 1962 (R. 12-25). Hearing upon the application for a preliminary injunction was set for April 16, 1962 (Tr. April 14, p. 148).

B. The Controversy Over the Duration of Shipping Articles Executed During the Injunction Period.

The application for the restraining order was made in open court with counsel for all parties present. In the course of the proceedings, counsel for the Marine Firemen's Union raised the question of whether, under the order, "the men must sign aboard vessels and sign [shipping] articles requiring the performance of services beyond the period of 80 days" (the maximum duration of injunction relief under Section 209 of the Act) (Tr. April 11, p. 13).

Shipping Articles constitute an agreement between the master of a vessel and the individual seamen which fixes certain aspects of their relationship during a voyage. The Articles expressly subject the seamen to the discipline of the master, and make provision for such matters as "the duration of the intended voyage or engagement," the "respective employments" of the crew, the time for report

ing on board, the "amount of wages which each seaman is to receive," a "scale of the provisions which are to be furnished," and "any regulations as to conduct on board." Title 46, U.S.C. Section 564. Shipping Articles must be signed for certain voyages specified by statute, and it has been customary for such Articles to be executed in most, if not all voyages covered by the collective bargaining contract between P.M.A. and the maritime unions representing the employees of its members (P.M.A. Pet., App. B, 34-35 n. 1). The practice has been to specify a term of not more than nine months for Shipping Articles (*id.* at 35). As further explained in an affidavit of William J. Jordan, president of the Marine Firemen's Union (R. 78-79):

> "The duration of the voyages on which the seamen sail is ordinarily much less than the term of the Shipping Articles, and it is the usual practice of the shipping companies to terminate the Shipping Articles at the completion of a foreign voyage. When such employees remain on board the vessel and sail on a subsequent voyage, new Shipping Articles are signed, again for a term of time not exceeding nine calendar months. Upon return of a ship after a foreign voyage it is the practice of the shipping companies to pay off the seamen as soon thereafter as practicable. When a vessel arrives back at an American port at the termination of a voyage where the Articles are to be terminated, the seamen are paid off all wages and moneys due them upon discharge of the Shipping Articles and sign new Shipping Articles before departing for another voyage."

Although the question as to the term of Shipping Articles to be executed during the period of the injunction was discussed upon application for the restraining order, as stated above, the matter was not resolved (Tr. April 11, pp. 13-16, 26-29, 41-45, 50). The order enjoined in con-

ventional terminology continuation of the strike, interference in an "orderly resumption" of work, and required the striking Unions to instruct their members "to resume their normal employment" (R. 64-67).

Following issuance of the restraining order, the Unions notified the strikers to return to their ships, and preparations were made for sailing (Tr. April 13, 85-86). When the seamen were presented with Shipping Articles for terms of nine months, however, many declined to sign. Their refusal was in accordance with the advice given by the Unions that they were not required by the restraining order to commit themselves not to resume strike action, if the contract dispute remained unsettled, after the expiration of 80 days and return of their vessels to an American port. The Union further provided the seamen with a written rider to the Articles which expressly permitted termination of the Articles "in the event the vessel is in a U. S. port and a bona fide strike or work stoppage occurs and the vessel is involved in such strike or work stoppage" (Tr. April 13, p. 14).[3] The seamen informed their masters that Shipping Articles of conventional term would be executed if the rider were adopted as a part of the Articles.

In consequence of the seamen's position as to Shipping Articles, Pacific Maritime Association applied on April 13, 1962, to the district court for a supplemental order which would have expressly assured the execution of Shipping

3. The language of the rider was taken from an agreement which had been in effect between the American President Lines, a member of P.M.A., and the Marine Firemen's Union during an earlier strike in which that Union was not directly involved (Tr. April 13, 82-83). Pacific Maritime Association and the Unions had also agreed in negotiations following expiration of their most recent contract that provision would be made in their new contract, if overall agreement could be reached, for termination of Articles in the event of a strike situation. (*ibid.*)

Articles purporting to bind the seamen to continue work for periods of time after their return to American ports after the expiration of the injunction period. A hearing was held the same day, at the conclusion of which the district court, at the request of counsel for the Government, entered Findings of Fact and Conclusions of Law, and a Preliminary Injunction in substantially the same form as the restraining order (P.M.A. Pet. App. B, pp. 13-15, Tr. April 13, 126-127, 133, 142). The district court further scheduled April 16, 1962, for hearing upon "any and all proposals concerning a supplemental order to be made herein" (*id.* p. 148).

C. The Supplementary Order of April 18, 1962, and the Denial of the Marine Firemen's Union's Motion to Modify the Preliminary Injunction.

Two applications were made at the hearing of April 16, 1962. Pacific Maritime Association requested the district court to issue a supplemental order substantially the same as that which had been proposed on April 13, and which would have the effect of requiring the seamen to continue work after the expiration of the injunction period until all cargo had been discharged and their vessels berthed according to their employer's wishes at American ports on return from voyages begun during the injunction period. The Marine Firemen's Union, on the other hand, requested that the preliminary injunction be amended to include provisions which would protect the right of the striking employees to resume strike action at American ports after the discharge of the preliminary injunction, even though cargo had not been unloaded (R. 76-77). In addition, the Marine Firemen's Union requested that the district court restrain sailings on voyages, more than one-half of which would occur after the expiration of the 80-day period of the injunction, on the ground that encroachment upon the

right to resume strike activity in such situations outweighed the interest in enjoining strike activity during the 80-day period (R. 77).

On April 18, 1962, the district court issued its supplementary order and memorandum opinion in which it denied the application of the Marine Firemen's Union, and granted substantially all of the relief requested by Pacific Maritime Association. The supplementary order enjoined the Unions from "insisting, demanding or requesting that the shipping articles" be restricted in any way that would allow seamen to leave their jobs "prior to the time that the vessel has concluded its normal scheduled return voyage, has discharged and delivered all of its cargo, and has been shifted to a berth designated by the employer for its safe mooring should there be a resumption of strike activity"; from interfering with the "orderly sailing of vessels or schedule for their normal voyage to completion of the work as hereinbefore set forth"; to direct seamen to sign on "normal shipping articles", without "limiting their employment to a period of eighty (80) days"; and to "furnish the necessary replacements for crew members, so that any vessel sailing pursuant to the provisions of the preliminary injunction can, without interference by strike activity, continue to operate until all cargo loaded . . . is discharged and delivered and the vessel is shifted to an appropriate and safe berth as directed by the employer" (P.M.A. Pet., App. B, pp. 29-30). In addition, the supplementary order provided that the Shipping Articles should "terminate and expire upon the completion of the voyage in the manner provided" by the order, and that a photostatic copy of the order should be "affixed to the said articles" (*id.* pp. 30-31).

D. The Decision of the Court Below.

On appeal to the court below, the supplementary order of the district court was affirmed, except as to its provisions

which purported directly to restrain the prosecution of strike activity by the Union during the period following discharge of the preliminary injunction. The court below remanded the proceedings to the district court for the single purpose of adding to the order "a provision terminating this order upon the discharge of the injunction" (P.M.A. Pet. App. B, p. 18a).

The court expressly rejected Pacific Maritime Association's contention that Section 301 of the Act, in authorizing district courts to "make such other orders as may be appropriate", contemplated the issuance of orders effective after the discharge of the preliminary injunction. The decision below reasons that this "ancillary power was not a grant of 'a separate equitable jurisdiction which would be free of the restraints, including the restraint as to duration, imposed on the issuance of the basic injunction'" (*ibid.*, fn. 11). This conclusion is not affected in the court's view by the possibility that "such extended duration ... would be necessary in order to obtain a full adjudication of the matters during the eighty-day period" (*ibid.*).

With respect to the provisions of the order of the court below which prescribed the form of disclosure to be made by the seamen were to execute during the period of the injunction, the court below stated (*id.* at p. 11a):

> "It is nevertheless true that the subsequent order employs imperative language to effect a separation of shipping articles which contractually bind the seamen to serve for periods which may extend far beyond the eighty-day But since these are the kind of articles the seamen were signing immediately prior to the calling of the strike, the provisions in question do no more than maintain the *status quo*. This, as we have held, is permissible under Section 13(b), and is that required to effectuate the Congressional purpose."

Finally, the court below held, "On the same reasoning ... that the [district] court did not err in refusing to modify the injunction to prohibit sailings where less than half of the voyage would occur before the eightieth day (*id.* p. 45).[1]

RESPONSE TO THE PETITION OF PACIFIC MARITIME ASSOCIATION

The petition of Pacific Maritime Association does not appear to present a substantial question of statutory construction or application. As pointed out by the court below, "The statutory limitation upon the duration of injunctions issued under the Act is spelled out in words of command. Only such production as may be compelled by injunctive sanctions limited to eighty days, may be achieved either under the injunction or any order supplemental thereto" (P.M.A. Pet., App. B, p. 44). It may be added that the legislative history of the national emergency injunction provisions of the Act fully supports this conclusion. Senator Taft, in explaining the measure on the floor of the Senate, stated that the Senate Labor Committee, whose bill became law, had rejected proposals which would have provided for more stringent regulation. The Committee had reasoned that (Vol. 2, Leg. Hist. of Labor Management Relations Act, (G.P.O., 1948), p. 1008):

> "Eighty days will provide plenty of time within which to consider the possibility of what should be done; and we believe very strongly that there should not be anything in this law which prohibits finally the right to strike."

In the last analysis, the contrary contentions advanced in the memorandum opinion of the district court and by

1. Cross-petitioner does not seek review by this Court of the determination of the court below on this phase of the case.

Pacific Maritime Association are supported only by considerations of economic policy. As this Court has had occasion to note, however, there has already been a congressional determination of the policy factors involved in the national emergency injunction provisions of the Act, and this determination "is of course binding on the courts." *United Steelworkers of America v. United States*, 361 U.S. 39, 41.

We do not deny, however, that the question presented by Pacific Maritime Association's petition is of substantial practical importance to the operation of the west coast maritime industry during the period of the present injunction, and in obtaining cargoes on return trips to this country during the post injunction period. It is manifestly desirable, moreover, that all questions presented in a proceeding of this nature be determined by the Court in the event certiorari is granted on any part of the case. In these circumstances, in and in view of the cross-petition herein, we do not oppose the granting of the petition of Pacific Maritime Association if the cross-petition is also granted.

REASONS FOR GRANTING THE CROSS-PETITION

1. In determining that the supplementary order of the district court must be dissolved upon discharge of the preliminary injunction, the court below has recognized that the Unions are thereafter free, insofar as the national emergency provisions of the Act are concerned, to resume strike action. In affirming provisions of the supplementary order which prescribe the form of shipping Articles to be executed by seamen during the period of the injunction, however, the court below has placed the Unions in a position where they have individually committed themselves not to resume strike action at the end of that time. Such

unions are apparently free to direct it. This dilemma creates problems which have a direct and perhaps controlling influence upon the possible resumption of strike activity, should there be no settlement of the contract dispute during the remainder of the injunction period.

Thus, picketing at docks where vessels return after the discharge of the injunction, an activity which is not prohibited by the decision below, might well prompt seamen to decline to continue work. In the event that their Shipping Articles have not been terminated, respect for such a picket line may raise most serious questions of forfeiture and other penalties. See, e.g., 46 U.S.C. Sections 596, 701; cf., *Southern Steamship Co. v. N.L.R.B.*, 316 U.S. 31. Questions may also be raised with respect to the legal propriety of union activity which has the effect of inducing a refusal to work prior to the termination of shipping articles. The problems which thus relate to resumption of strike activity are in large measure the consequence of the supplementary order of the district court and the decision of the court below. Thus, the Unions have been placed in a position where they must make a judgment, in the event a contract settlement is not reached, respecting the resumption of a strike which has been determined to affect the national health and safety, in circumstances where they are judicially informed that they are free to strike, but their members are in effect judicially required to waive the right to join such a strike until specified work has been completed. We submit this judgment should be made with the benefit and in the light of this Court's determination of the validity of the district court's regulation of the dispute in its supplementary order.

2. The decision of the court below, insofar as it affirms the district court's regulation of shipping articles, raises a substantial question as to the scope of the authority of

district courts under the national emergency injunction provisions of the Act. Direct judicial encroachment upon the right of individual employees to engage in strike activities, as reflected in the supplementary order, cannot be reconciled with the statutory limitation upon judicial sanctions against resumption of strike action by the unions which represent such employees. There is nothing in the provisions of the Act involved in this case which authorizes this kind of limitation upon resumption of strike activity after the statutory 80-day period. On the contrary, this Court has had occasion to caution that Section 13 of the Act, which expressly protects strike action where not "specifically" restricted, "is a command of Congress to the courts to resolve doubts and ambiguities in favor of an interpretation of [other provisions] which safeguards the right to strike as understood prior to the passage of the Taft Hartley Act". *N.L.R.B. v. Teamsters Local*, 362 U.S. 274, 282.

The court below would justify its ruling on the ground that Shipping Articles which are not terminated until after discharge of cargo are customary in the maritime industry, and that the supplementary order in this respect simply

3. It cannot seriously be questioned that the supplementary order places seamen who work during the period of the injunction under compulsion to execute Shipping Articles that commit them to continue working after the discharge of the preliminary injunction, until all cargo on vessels sailing under protection of the injunction has been unloaded and the vessels secured at a berth of the employer's choice. Paragraph 3 of the order specifies that the Articles "executed by the seafarer" shall "expire upon the completion of the voyage in the manner particularly provided for in paragraph '2' hereof." Paragraph 2 of the order directs the unions to instruct their seamen to "sign on normal shipping articles". Paragraph 1 of the order makes clear that "normal" Articles, in the circumstances of this case, comprehend a term that expires after "the vessel has concluded its normal scheduled return voyage, has discharged and delivered all of its cargo, and has been shifted to a berth designated by the employer for its safe mooring." P.M.A. Pet. App. B, pp. 29-30.

maintains the *status quo*. (P.M.A. Pet., App. B, pp. 41, 45). To the extent that maintenance of the *status quo* is a relevant consideration in this kind of case, however, it can only pertain to duties to be performed during the period of the injunction not to commitments which mature during the post-injunction period. The provisions of the injunctive relief granted by the district court which contemplate the continuance of work under terms and conditions in effect prior to the injunction are not questioned; the defect of the supplementary order is in its regulation of post-injunction terms and conditions. Moreover, it is scarcely meaningful to refer to the touchstone of "normal" Shipping Articles in the abnormal situation where the seamen and their unions are seeking to clarify their rights upon the dissolution of a national emergency injunction. It is not suggested that the statutory law which governs shipping articles prohibits a duration clause that would afford the protection sought by the employees in this case. The term of Shipping Articles is a matter left to the resolution of the seaman and his master. There is nothing in the Act that supports judicial insistence upon a term that outlasts the restricted measure of injunctive relief which the courts may impose.

3. The lapse of the remaining period of the preliminary injunction will not moot the question presented herein. The effect of the Shipping Articles, insofar as questioned by the cross-petition, will be felt only in the post-injunction period. Thus, as seamen return to American ports after the dissolution of the injunction, they will not be free under their Articles to rejoin the strike, if it is resumed, until their vessel's cargo has been discharged and the vessel has been moved to a berth specified by the employer. Vessels do not ordinarily discharge all cargo at a single port, but upon

return from a foreign voyage will stop at several destinations for unloading. Since voyages begun during the period of the injunction may range up to three and four months in duration, it is apparent that the practical effect of the supplementary order may not be dissipated until September or October. It would then, however, be too late for this Court effectively to review the supplementary order.[6]

In short, there is in this case only an alternative between immediate review of the questions presented and no review. As shown, the question presented by the cross petition has both practical importance relating to the resumption of strike activity of far-reaching scope, and legal importance in terms of clarifying the scope of national emergency injunctive powers of the district courts. Review by this Court is accordingly warranted.

CONCLUSION

For the reasons stated, it is respectfully submitted that the cross petition for writ of certiorari should be granted, and if granted, that Pacific Maritime Association's petition similarly should be granted.

June 5, 1962.

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6. Seamen have sailed under the shipping articles prescribed by the district court since the issuance of the supplementary order, and will continue to do so while the present case is before this Court. This circumstance, however, does not preclude implementation by this Court of a determination that the supplementary order is invalid. An appropriate order may be entered upon direction of this Court that will undo the effects of the invalidity.